

## COUNCIL MEETING

JANUARY 17, 2013

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Wednesday, January 17, 2013 at 9:10 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Gary L. Hooser  
Honorable Ross Kagawa  
Honorable Nadine K. Nakamura  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro

### APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Mr. Kagawa.

Chair Furfaro: Any amendments?

Clerk: Yes Chair, on page six (6) on Committee Report number PWPR 2013-03 on Bill No. 2458, that should read *Bill No. 2458, Draft 1*. And on page eight (8) on Bills for Second Reading, Bill No. 2458, Draft 1 – *Draft 1* is missing.

Chair Furfaro: Let the record so note the agenda changes. I would like to ask for an approval on the agenda as modified.

Mr. Rapozo moved for approval of the agenda as amended, seconded by Ms. Nakamura, and unanimously carried.

### COMMUNICATIONS:

There being no objections, C 2013-43 was taken out of the order.

C 2013-43 Communication (01/10/2013) from the Council Chair requesting the presence of the County Attorney to provide a briefing to the Council on the following:

- The County's authority to implement legislation relating to air pollution control as it relates to fireplaces and other wood-burning appliances; and,
- An overview of the State Clean Air Branch policies relating to air pollution control and "no burn" periods:

Ms. Nakamura moved to receive C 2013-43 for the record, seconded by Ms. Yukimura.

Chair Furfaro: That is the agenda item that is introduced by me for today's discussion. This is more about discussion on policy, practices, and to find out where the County has been exempted for such regulations, especially as it relates to the current Ordinance on No-Burn days. On that note, I am going to suspend the rules, if I can, and ask the County Attorney for a briefing, followed by public testimony.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, Deputy County Attorney: Aloha, Chair Furfaro. Thank you, Honorable Councilmembers. For the record, Deputy County Attorney, Mauna Kea Trask. Regarding this issue, first off, the County's authority to implement Legislation relating to Air Pollution Control as it relates to fireplaces and other wood-burning appliances; in order to understand this issue, it is a complex issue. The difficulty with it is that a lot of the terms of art and standards are actually legal ones. The legal standards themselves have their own special meaning as understood through Case Law, Common Law, and Statute Code, versus commonly understood definitions and applications; so there is a play there.

First off as a matter of background. Kaua'i's current statutes regarding Clean Air Regulation, Air Pollution Control, under 342B, which is State of Hawai'i's Clean Air Act is a State implementation of the most recent 1990 Federal Clean Air Act. In this case, it is one of those situations where it is a top-down approach. The Federal Government, via the Environmental Protection Agency (E.P.A.) is authorized to regulate air pollution throughout the Country. They provide funding to States to implement...implementation plans. The State has done that through the Clean Air Branch, through 342B. It was amended in 1992 to fall in line with the 1990 Federal Regulation, and the subsequent Hawai'i Administrative Rules (H.R.A.) promulgated pursuant to 342B were enacted in 1993, specifically November 26, 1993. What happened in 1992 is that the old 342B, which was the State's Clean Air Act, was repealed and replaced by today's 342B. 342B itself states that the Department of Health shall administer the State's Air Pollution Control Law through its Director. Under Hawai'i Revised Statutes (H.R.S.) 342B-3, "the Director shall prevent, control, and abate air pollution and the emission of air pollutants in the State." When you look at H.R.S. 46-1.5, the State Legislature has granted the County of Kaua'i certain powers and has also subjected the County to certain liabilities and limitations. Approximately twenty-seven (27) in total...out of the approximate twenty-seven (27) powers, liabilities, and limitations, none include the regulation or control of air pollution. What that means is that the County of Kaua'i has not been specifically granted the authority to regulate air pollution by the State Legislature. However, under H.R.S. 342B-5, paragraph (b), "Any county

may adopt ordinances and rules governing any matter relating to air pollutant and air pollution control which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to air pollution control shall be void and of no effect as to any matter regulated," not permitted or not permitted, but regulated, "by a rule of the department upon the adoption thereof." If you look from 1992 when that Law was enacted, to and until November 1993, there was a time when there was nothing more specific than that. At that time, or prior to that time, Counties may have had Air Pollution Control Ordinances. But upon the regulation of any portion of Air Pollution Control, by the State Department of Health, any County Ordinances would be aborted of that. Currently again, there are no County Ordinances in-effect that govern Air Pollution Control, and we do not have any oversight over it.

H.R.S. 46-1.5 (13) does grant each County, "the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute," provided also that "the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State." There is a general catch-all provision whereby the County can pursue (inaudible) to police powers, regulate health and safety welfare. However, the law provides that though Statutes, if they are preempted by State Law, they will not apply. The Hawai'i Supreme Court has construed 46-1.5 (13) to mean that a minuscule ordinance maybe preempted pursuant to the same Statute if one, and this is a two-part test, "it covers the same subject matter embraced within a comprehensive State Statutory Scheme disclosing express or implied intent to be the exclusive and uniform throughout the State, or two, "it conflicts with the State Law." This is citing Richardson versus City and County of Honolulu. In this case, what you are looking at is that if you look at the H.A.R....I am sorry, the H.R.S. itself does not contain any prohibitions or any rules specific to Air Pollution. That was left up to the Department of Health. The reason why is because regulating Air Pollution Control is very technical and scientifically intense. What you need to do is establish "First Air Ambient Standards," which means that the general air in Hawai'i cannot be dirtier than...I do not even understand what the metric is, but it is a certain amount. It cannot be as dirty as "X." Beyond that, what they do is look at Source Pollution Point Source. There are Covered and Non-Covered Sources, and there is also regulation of different types of, in this case, particulates which would be Carbon Monoxide, Sulfur Dioxide, and all these different types of chemicals.

When you look at the H.A.R., which again was enacted, in (inaudible) of 1993, air pollution is very broadly defined. Air pollution means "the presence in the outdoor air of substances in quantities and for durations, which may endanger human health or welfare, plant or animal life, or property, or which may unreasonably interfere with the comfortable enjoyment of life and property

throughout the State, and in such areas of the State as are effected thereby.” It is important to know that each and every one of these rules, regulations, or statutes reference State. It all applies to State, so it is a Statewide Statutory Scheme. It falls under Department of Health under the purview of the Director. The prohibition within the H.A.R. is simple. It just states that, “no person, including any public body, shall engage in any activity which causes air pollution or causes or allows emission of any regulated or hazardous air pollutant without first securing approval in writing from the Director.” No air pollution is allowed. Air pollution is essentially anything that the State Department of Health Clean Air Branch declares is air pollution. If you look at the definition again of air pollution; it is anything in the air, an amount or duration that will injure you or cause you health problems. It is a permit scheme and only the approval of the Director, can it be allowed.

As of 1993, air pollution entirely, became regulated by the State Department of Health Director. What you have in this case, I believe at this time in 2013, because of the general statements of the Law, any Ordinances regarding Air Pollution that the County of Kaua’i would promulgate would be preempted.

Chair Furfaro: I want to take that a little further before I open that. Earlier, I attempted to take the existing “No-Burn Rules” to a model similar to that of the city of Seattle, which pretty much had stages of different no-burn days. It gets to the third step which does not allow fireplace burning unless that household has no other source of heat. It was implied to me that the County could not take an existing No-Burn Ordinance—or Bill, I am sorry, and enhance it. That was still in the jurisdiction of the State under the State Department of Health. Is that the way you understand it as well?

Mr. Trask: That is the way I understand it and it is because the operative one is regulated. It is regulated. Under the Air Pollution Control, and this is for reference H.A.R. Chapter 60.1. There are general prohibitions, which is again, no air pollution at all. Then there is Open Burning under sub-chapter three (3). Sub-chapter four (4) is Non-Covered Sources. Sub-chapter five (5) is Covered Sources. Within...let us see...H.A.R. 11-60.1-55, deals with no-burn periods so that no-burn periods are regulated by the State Department of Health already. It is difficult to speak in specifics regarding hypothetical Ordinances because really, it is all textual. The devil is in the details when you look at the Ordinances and how it relates. As a matter of general application, it is regulated and I would say it generally would be preempted, yes.

Chair Furfaro: Thank you for answering my question. Councilmember Yukimura, you have the floor.

Ms. Yukimura: Thank you, Chair, and thank you for putting this item on the agenda. Mauna Kea, thank you for your presentation. From it, it was pretty involved and...I do not know how someone without a Law background could really follow it, but it would be helpful if we could have it in writing.

Mr. Trask: That is fine. I can do that.

Ms. Yukimura: Okay. Please correct me if I am wrong, what I gather is that the jurisdiction for governing burning is within the State, and we at the County level are preempted; that is we are not allowed to promulgate any rules or regulations regarding burning.

Mr. Trask: Regarding air pollution as it relates to fireplaces and wood burning, yes.

Ms. Yukimura: Regarding air pollution as it relates to anything that comes under the definition?

Mr. Trask: Yes, and that is the difficult thing. When you say burning...burning itself, there can be ordinances...not necessarily air pollution. That is why the agenda language is so important today.

Ms. Yukimura: Right. If burning causes air pollution, then it is within the ambient of the State of Hawai'i to regulate it?

Mr. Trask: Generally, yes.

Ms. Yukimura: But you read the section that said that no person shall engage in any activity which causes air pollution.

Mr. Trask: Yes.

Ms. Yukimura: And that is under the Director of Health.

Mr. Trask: That is correct.

Ms. Yukimura: So no person shall engage in any activity which causes air pollution except with permit from the Director of Health, is that correct?

Mr. Trask: Correct.

Ms. Yukimura: That would suggest that air pollution caused by wood burning would be legal under that regulation.

Mr. Trask: Correct, but the matter would be, "What is the air pollution?" The air pollution again is quantities and for durations which may endanger human health or welfare. This is just an analogy, but if I am playing with my son at Kōloa Ball Park and he is running the bases, and he is kicking up dirt just by running the bases; that is creating dust in the air. It is not for a substantial amount or quantity that would cause anybody harm. If a big construction project is going on and they are moving heavy equipment one day, and there are no screens, and the dust is going constantly for months; it is no longer my son kicking up dirt. That is now possibly air pollution.

Ms. Yukimura: The distinction is whether from the...or from the pollution, there is harm? Right?

Mr. Trask: Yes.

Ms. Yukimura: Because your son kicking up dirt might create some pollutant in the air but it is not causing harm to human wellbeing.

Mr. Trask: Correct, for that amount and duration. The reason why this is important to know, and I think why it is appropriate for the Department of Health to regulate this is again, very technical. I would just like to give you an illustration. For Ambient Air Quality Standards...pardon me, I am looking for carbon monoxide...this is under 11-59-4. "In the ambient air, the concentration of carbon monoxide measured by a referenced method shall not exceed one. An average of ten (10) milligrams per cubic meter of air during any one hour period and an average of five (5) milligrams per cubic meter of air during any eight (8) hour period." The ambient air issues need to come in and Department of Health is uniquely and legally equipped to deal with that kind of stuff.

Ms. Yukimura: So what the standards I believe say is that if the minimum standard set is exceeded, then there is a presumption of harm. Is that correct?

Mr. Trask: That is just a method of illustration for Ambient Air Quality. Ambient air is the general air we produce.

Ms. Yukimura: Okay, I understand.

Mr. Trask: Yes, the general air on Kaua'i. That might not be the case for a point source. For example, another thing that is regulated by these rules is smoke. Smoke is defined in the H.A.R. Source is defined in the H.A.R. Stack is defined in the H.A.R. Smoke generally means smoke. Source means property, real property, and personal property, which emits and may emit any air pollutant; so someone's lot or a business property can be a "source." A stack means

a point in a source designed to emit solids, liquids, or gasses into the air including a pipe or a duct, not including (inaudible). It is all a part of the scheme.

Ms. Yukimura: For the sake of the public, H.A.R.?

Mr. Trask: Hawai'i Administrative Rules.

Ms. Yukimura: Hawai'i Administrative Rules are what you are citing?

Mr. Trask: Correct.

Ms. Yukimura: Okay. Thank you very much.

Chair Furfaro: Mr. Hooser, you wanted the floor?

Mr. Hooser: Yes. Mr. Trask, thank you very much. I have a few questions. Is all smoke by definition, air pollution?

Mr. Trask: No, it would have to be in an amount and quantities for the duration.

Mr. Hooser: Okay. The same with odors? Odors are not necessarily air pollution either?

Mr. Trask: I am sorry, odors?

Mr. Hooser: Yes, odors.

Mr. Trask: No.

Mr. Hooser: Okay. With H.R.S., Hawai'i Revised Statutes 46-17, it says that the State gives the Counties the power to regulate smoke and odors? The State cannot preempt us from regulating smoke and odors, is that correct?

Mr. Trask: No. The operative...and I think the most important part of that first sentence when referencing 46-17 is the qualification in State's entirety. Any provision of Law to the contrary, notwithstanding...layperson means despite any other Law..."the council of any county may adopt and provide for the enforcement of ordinances regulating or prohibiting noise, smoke, dust, vibration, or odors, which constitute a public nuisance." That is the most important part of the sentence. It is "public nuisance." Like I said, when I started, that is a legal term with legal value of a lot of legal history. Public and nuisance, as defined by

Webster's and applied by a layperson does not equate to legal public nuisance. It may, but legal public nuisance is an entirely different thing.

Mr. Hooser: Okay. During a couple of times in your presentation, you have used terms like "it may"...like you said "may," right? You have said "generally," which leads me to believe that maybe there are some opportunity and I will just cut to the chase here. I agree that the primary purview would be the Department of Health on these kinds of issues, but it is my understanding that they are not doing their job. If the County of Kaua'i sees an issue that is not being dealt with by the State, I think it is our responsibility to look for appropriate mechanism and an appropriate opportunity to deal with that issue. I guess what I am asking from the County Attorney's Office is rather than just say what we cannot do, give us some guidance on what we can do. It is clearly an issue and a problem in our community and it seems to me to be a valid one. When you look at no-burn days, certainly burning in fireplaces can contribute smoke to the air, the same way that somebody burning in the backyard can. There are fire hazards and possible things, so there are different ways to look at a problem. I will never forget Senator Inouye when he was passing the Hanalei Bridge. He said we could not get the money for this bridge because it does not need specifications of Federal Highways, so we called the bridge a monument and got money for monuments to fix the bridge. What I am looking for is a creative way for the County to exercise its authority to deal with this problem. Do you have any suggestions on how we might do that?

Mr. Trask: If I can touch a public nuisance very briefly, then I think that will scope the situation to where you can appreciate it, and then we can look at the other possibilities. The reason why it is important to look at public nuisance is because a public nuisance is...I am sorry...I will start here as a brief background. I apologize. In its inception, "a public or common nuisance was an infringement of the rights of the crown in England. The earliest cases involved"...and this is from the "Restatement of Law Towards Second." "(Inaudible), which were encroachments upon the world domain or public highway and could be redressed by a suit brought by the King. At Common Law, nuisance came to cover a large, miscellaneous and diversified of minor criminal offences, all of which involve some interference with the interests of the community at large; interests that were recognized as rights of the general public entitled to protection."

When you look at public nuisances today, with the elimination of Common Law Crimes, general statutes have been adopted. For example, 46-17. In most States, "to provide criminal penalties for public nuisances often without defining a term," and public nuisance is not defined that way, "or with only a very broad and sometimes rather vague definition. These statutes uniformly have been construed to include the interferences with the rights of the public that were public nuisances as a common law." The interesting thing is that when you get to public nuisance as



it applies to fireplaces, wood burning fireplaces; there is an interplay there because not only are you dealing with air pollution and possible public nuisance, you are also dealing with private nuisance. You are also dealing with zoning, building codes, and fire regulations. There is a bunch of avenues. They all converge sometimes with one issue. When you look at public nuisances, and all the related Statutes, you look at what is called "Effective Compliance." Although it would be Nuisance and Common Law, generally, conduct that is fully authorized by a Statute, Ordinance, or Administrative Regulation, does not subject the act or detour liability. In addition, if there has been established, a comprehensive set of Legislative Acts of Administrative Regulations. For example, our "Comprehensive Zoning Ordinance." That is what that is, "governing the details of a particular kind of conduct. The Courts are slow to declare an activity to be a public nuisance if it complies with those regulations. Thus, at one time, Courts frequently engaged in "Judicial Zoning," where the determination of whether a particular land use was unsuitable to a locality and therefore, unreasonable. However, now that most cities have complete sets of zoning regulations, and agencies to plan and administer them, the Courts have shown an inclination to leave the problem of the appropriate location of certain types of activities, as distinguished from the way in which they are carried on to those Administrative Agencies. The variety and complexity of a problem and of the interests involved, and the (inaudible) that the particular decision (inaudible) paired with knowledge and matters, not presented to the Court of interest or more handled more appropriately by that Administrative Agency." The thing you get here is that is a public nuisance. I think that when you are regulating air pollution via public nuisance, you have to watch out, because often times, these are neighbor to neighbor or small community actions. Those tend to deal with what is called "Private Nuisances." A private nuisance is something that interferes with your own personal enjoyment of your property, or a small groups own personal enjoyment of their property. Often times, neighborhoods have what is called...you all know what C.C. & R.'s are; "Covenants, Conditions, and Restrictions." When you buy into a neighborhood, you sign a document that says, "Notwithstanding any legal use, I will not use my property that would be a nuisance to another." In those circumstances, that private person has a right of private action against their neighbor pursuant to those C.C. & R.'s or even pursuant to Common Law, Private Nuisance Claim. The thing is that often times these problems can be solved, but it is a private matter, and I am not saying they are not important. I am not saying that, but what I am advising you today is air pollution, via the County, within the current statutory scheme, is preempted by the State Law. If there is a nuisance, and that nuisance complies with the State and County Regulations; Fire, Zoning, and Building, that person could still seek redress via private nuisance claim, enforcement of the C.C. & R.'s. I think that is also an important understanding to have.

Chair Furfaro:

Okay. Mr. Rapozo, you have the floor next.

Mr. Rapozo: Thank you, Mr. Chair, and thank you, Mauna Kea for being here today. I guess I am confused, and I understand the air pollution component, and that it is a regulated issue and it belongs to the Department of Health. I do not have a problem with that, but I do have some questions as it relates to 46-17 because...and again, I do not think we have the time today to go into the legal definitions, but I look back in 2002 when this County passed the "No-Smoking in Restaurants" and the "No-Smoking in Closed Areas." I have a copy of the Bill here, and we used 62-34 as the basis or justification for passing the Bill. I look at the analogy where you have residents that live on the street, and I look at that as customers in a bar or in a restaurant. The neighbors have been crying for a long time, and I have read the emails from the Department of Health, from E.P.A., from the County. From everywhere they have gone, they have been told "sorry." So I look at the smoke, and I was thinking about this after talking to Mr. Hooser this morning and just asked Staff to get me the Bill—"what was the genesis, or basis for us to pass the Smoking Bill in a public place?" I am reading the intent and purpose and we are using 62-34. I guess, based on your rationale, one would argue, "You guys cannot pass a "No Smoking Bill" in a bar or in a restaurant because that is pollution. That is regulated by the Department of Health." We did not have that back in 2002. We were allowed to pass the Bill, and I was not here, so I cannot take credit for it, but I am reading the Bill right now and the Legislative intent purpose clearly says that "Pursuant to the Power Granted in Article 2 of the County Charter and Section 62-34 H.R.S. to protect health, life, and property, and to protect the general welfare and safety of the inhabitants of the County, this article prohibits smoking"...and so forth. I am looking at, "What is the difference?" We have a cigarette that generates smoke that causes a problem, and in this case, we have a fireplace that somebody is burning trash or rubbish, and even on a "No-Burn Day." I am asking, and as Councilmember Hooser said, "How can we incorporate our authority into protecting our citizens?" I have been up there. I have seen what is going on and I cannot imagine: number one, that the Department of Health would ignore you folks. That is number one. To me, that is where the shame belongs. Shame on them. Granted they have justified their inaction, they have cited the legal reasons why they cannot get involved, fine. Now it is in our level. I am saying let us apply the same standard we did in 2002 to prohibit people from smoking a little cigarette. Let us see if there is a way we can apply that same standard for a fireplace or trash burning—something that we can stop this behavior from continuing. That is what I am asking.

Mr. Trask: I appreciate an opportunity to follow-up because I am looking at, right now, H.R.S. Chapter 62 was repealed in 1988, so I have to double-check that.

Mr. Rapozo: Well, this Bill is flawed because this 2002 Bill cites 62-34.

Mr. Trask: Okay. I would like to follow-up with that. Second, regarding this specific issue, it is my understanding that Nolan Shirai, the acting Manager of the Clean Air Branch at the time, via letter dated October 17, 2012; the Department of Health did conduct fifty-two (52) investigations into this issue. After that, they concluded that there is nothing more that can be done regarding it. Regarding the cigarette ordinance, I do not know. I will have to follow that, but it very well could be a false analogy because again, the regulation of air pollution and the regulation of air control is very technical. The facts, circumstances, and Federal standards as they are applied...you have to look at specifically those situations. It regulates it like that because then, you get into a lot of things...I guess without following up more, I cannot really speak specifically, but it is very difficult and it may seem counter-intuitive, but I think that is because at a certain level, we all become laypersons to the Engineers who dictate the standards, and the E.P.A. which promulgates as regulations.

Mr. Rapozo: I am just asking that...and again, I am hearing, "it might be a false analogy." I understand all of that. I am not the lawyer, but I am asking your Office and whoever can help us, how can we draft a Bill that can meet the result that will stop these unhealthy actions? I understand, maybe it is not pollution, but if it is pollution, like smoking in a bar...no one stopped the Council of 2002 saying, "Hey you cannot do that." That falls under the regulation of the State because it is smoke, it is technical, complex, and there are microns of whatever. It did not happen and I have to believe that 46-17, and we will ask, Mauna Kea for a more thorough analysis of public nuisance because if we cannot do pollution, then toss that out and let us focus on the public nuisance part, and let us utilize 46-17 and our authority there. I think I have heard from enough residents of that street that it can be a public nuisance.

Mr. Trask: Those residents of that street have a C.C. & R. that they can enforce, but the difficulty becomes access to the Court, because I have also understood that they have spoken with a private attorney and the private attorney said, "There is not much I can do for you, too."

Mr. Rapozo: Well...

Mr. Trask: If I can just complete one thing, I think that air pollution is not the way to go. I do not think public nuisance is the way to go either. I think when you are looking at this, it becomes a land-use zoning issue. "The allowance of fireplaces." Their "allowance," generally. That is a different issue because then you come into...so the fireplaces under zoning regulation may be able to be met, but when you look into grandfathering issues and takings if you are going to go back. You want to be creative, (inaudible), but with every twist and turn, more issues pop-up. I think...I am happy to work with anyone on the Council, always, to address any issue you think is important and should be addressed within

your jurisdiction of authority. Just like any other law that you guys...or ordinance that you present and move through, I would be happy—Analysts, we can look at specifics. I do not think generalities will help in this case. We need to look at specific solutions and specific ways. I can work with your Analysts. They can do the research, looking at the Ordinances, the authority, and how they interact. Then we can review them, it can go through the established process. I can provide you hundreds of pages of Law review articles on public nuisance that say it better than me, but I do not think that is going to help.

Mr. Rapozo: Do not get me wrong, I do not think the fireplace is a problem. I think it is what they are putting in the fireplace and when. If it is eighty-five degrees (85°) outside, there is no reason a fireplace should be burning. Especially, when there are materials in there that are meant to be burnt in a fireplace. I am not asking for a ban on fireplaces. Please, do not think that is where I am heading, but I think there needs to be some restriction. For me...we will send over, if Staff you could take note. I just want to see a comparison done of the smoking (inaudible) and see why we can do one and not the other. That is all.

Mr. Trask: I just want to say for the record, it is not only the State agency looked into this, but our County Departments also looked at this; our Planning Department, Fire Department, and their Building Department. When asked, they reviewed their records and files on it. I just want to say this for the record because I do not want the people to think that the County has not taken any action. The Fire Department inspected on August 20, 2011, and concluded after inspection that the fireplace issue was following current regulations on fireplace and backyard burning. The Planning Department, via letter, March 26, 2012, (inaudible) are allowed in the Comprehensive Zoning Ordinance (C.Z.O.) and they found a new violation of the Code subsequent to inspection by the Department. Furthermore, when I checked with Public Works Buildings Division, a permit was issued and a final inspection was conducted for the subject fireplace and everything checked out. Also, Public Works requested the Department of Health to take a second look and the Department of Health, as I stated, took numerous looks. It was permitted under Permit Number 11-12-31 and approved. Action has been done. I think for this specific issue, it is a right of private action that is the clearest and easiest way to go.

Chair Furfaro: Mauna Kea, if I can. All of you, with what you have just shared with everyone, is pretty well-documented in the file. I think you are aware of it, in my office. The correspondence that the Fire Department (inaudible). The response from the Planning Department really referencing again that the nothing could be done with retroactive removing fireplaces. There are comments in there about the subdivision having a protective covenants through their C.C. & R.'s that in fact the ownership within that subdivision would have some legal approach through the protective covenants that are in their deeds. I just

want to say for the members...Yvette, is that file the file that you have now? Yvette has the file and the history of that if anybody wants to go through it and what those written responses were. I just wanted to say that.

Mr. Rapozo: (Inaudible).

Chair Furfaro: Yes, I just wanted to make sure you knew those documents are available in my office.

Mr. Rapozo: Again, Mauna Kea, I want to make it clear. I did not reference that the fireplace was illegal or anything like that. I did not try to paint a picture that the County did not do anything. I think everybody did...everything was done that can be done. It is not solving the problem, so we are really the last line of defense for this residence. We are trying to find a way to help them. You mentioned the building permit was (inaudible) in 2011?

Mr. Trask: Yes.

Mr. Rapozo: Where was that house built with a chimney?

Mr. Trask: I am not sure. It may have been built earlier, and I think it may have been approved via retroactive permit.

Mr. Rapozo: Right, okay. That is not legal. If they built a chimney without a permit, then that is not legal. (Inaudible) retroactive, (inaudible), after the fact of a permit, it became legal, but at the time of the inspection...we will follow that up as well. From my understanding, the fireplace have been not that much longer than 2011.

Mr. Trask: Yes, but I think the Building Code...the Uniform Building Code does permit retroactive permitting, because it encourages compliance, not only punitive enforcement.

Mr. Rapozo: I believe our County Code requires a permit before you build. I am not talking about the Uniform Building Code, but our County Code. It says before you build an improvement on your home, you have to get a permit.

Mr. Trask: Our Building Code is based upon the Uniform Building Code.

Mr. Rapozo: I understand that, but my point is...we went there and found a violation and I do not know how we acted on it.

Mr. Trask: I just want to say that you guys do everything you can do to help the community. You all do a very excellent job. I think that if you want to regulate the air pollution control, petitions can be made in 91-3 to change the rules of the enforcement by the Department of Health. I think this is an issue that the Department of Health has an opportunity to change their rules. I just do not see this body as the last line of defense. The last line of defense in an issue like this is really yourself protecting your family. If you cannot do that...if someone for instance cannot afford an Attorney, they can call the a (inaudible) referral line, to see if they can get a firm to do "Pro Bono" work. People do this stuff, it is there. I hope I am not coming across as callous or like I do not care about this specific issue or specific people. I am simply answering the questions regarding the legal doctrines.

Mr. Rapozo: I appreciate that. Again, you are the Lawyer, not me. I am just trying to find a way to make this work. I find it...I will go back to the scope. Again, we could have (inaudible). There is nothing we can do. (Inaudible). That is the Department of Health's issue. They always have had the right to sue a restaurant and have the right to not go there, go to another restaurant. I just want to make sure that the standard implied in 2002 is the same one we are implying, or trying to imply here today. If I could get a legal comparison between the two (2) and explaining the differences, I would really appreciate that so we can inform the residents and constituents. Thank you.

Chair Furfaro: Yes, and I just want to make sure we do not assume that some members here at the Council have not been communicating because we have on all of the efforts that have been made. Today's minutes, from this meeting will be going to Mr. Gill at the Department of Health under my signature so that he is fully aware that we have taken this discussion this far.

Mr. Trask: Just for the record, you have been communicating within the parameters of The Sunshine Law, just so everyone knows.

Chair Furfaro: Yes, I had that discussion with a member here that I could not share all of my correspondence based on the fact that, that is a violation of The Sunshine Law, by some interpretations. My file is available, Mr. Rapozo, to you, all of that documentation. Councilmember Yukimura, you have the floor.

Ms. Yukimura: Thank you, Chair. I think Councilmember Rapozo raises a very interesting and important question about the distinction. I think it may have to deal with partly the fact that there is a lot more power to regulate commercial, both in public and private law because they invite people into their jurisdiction. They are making money from it. It might be that it even comes under this legal public nuisance grounds that you mentioned, but I know that there is a greater duty to the public when you have a commercial establishment.

Mr. Trask: Yes. Private premises can become considered legally public premises depending on, like you said, intend...

Ms. Yukimura: Intend to what?

Mr. Trask: Intend to invite all of these kinds of other things. I think you may be right.

Ms. Yukimura: Okay. My question comes down to the zoning, which you mentioned; both Planning and your Office have looked at, in terms of whether there were any zoning violations and or whether there was jurisdiction under our zoning powers to regulate fireplaces. I get that we can regulate the construction of fireplaces or whether and where fireplaces can be built.

Mr. Trask: Correct.

Ms. Yukimura: Zoning is also a regulation of uses.

Mr. Trask: Correct.

Ms. Yukimura: In the area of regulating uses, are we preempted by State Law? Or can we say that certain kinds of uses of a fireplace are prohibited?

Mr. Trask: I would have to do...in order to answer that specific question, because fireplaces are different from stoves, which are treated different with open pits like barbeques and stuff. As a general matter, (inaudible), the March letter of the Planning Department, chimneys are allowed under the C.Z.O. Any further use restrictions, I am sure we can look into that and see, but I do not want to speak specifically and make any representations as far as yes and no at this time. I am just not prepared to.

Ms. Yukimura: That is then a question that we will ask you formally to answer?

Mr. Trask: Preferably in writing so I can make sure.

Ms. Yukimura: Sure.

Chair Furfaro: That would be question number three (3) for the Staff to send over to you.

Ms. Nakamura: Thank you, Mauna Kea, for your presentation. I just wanted to clarify that the No-Burn Days are regulated by the State of Hawai'i?

Mr. Trask: Correct.

Ms. Nakamura: In that Law, could we add that fire burning is not allowed on No-Burn Days?

Mr. Trask: I would have to look at what the specific Law states and how it relates to No-Burn. The H.A.R.'s regarding the air pollution control itself; there are about two-hundred fifty (250) pages long.

Ms. Nakamura: Okay.

Mr. Trask: I did not print the whole thing.

Ms. Nakamura: One of the reasons is because there are reasons why they set those days as No-Burn Days...it seems like it would be consistent not to allow the use of fireplaces on those days for the same reasons.

Mr. Trask: That is where it becomes...again, because it is a Comprehensive Statutory Scheme by the State, which is implemented by the Director. That is the person who makes those calls. That is why a rule change or some other...whatever it will be, it may seem so to us. It definitely seems so to me, however, the experts feel differently for other reasons.

Ms. Nakamura: Okay. I think that is something I would like to explore and it might be a future recommendation to the State Legislature.

Mr. Trask: Correct.

Chair Furfaro: May I expand on that?

Ms. Nakamura: Sure.

Chair Furfaro: In the file I made referenced to, that question went over from me about No-Burn Days and not allowing fireplaces to be built. In a very short note aback, I was informed that that has to be done by the State. Again, I will be glad to share that response with you.

Ms. Nakamura: We could put it into a future Legislative packet of recommendations.

Chair Furfaro: Absolutely.



Ms. Nakamura: That is something I would like to follow up on. The second issue in my discussions with the Department of Health is that the issue is also measuring that air pollution at that particular site, and the fact that they need to move the measuring device, which is planted at Nāwiliwili in that Niumalu area that was used to monitor the boat emissions, to move that to a different site. It requires a site location. It requires a hook-up to electrical. I think it is a costly thing and I think something that may not be in their budget. It sounds like that is another issue. It is just the cost related to moving the device that would actually measure air emissions, which is preventing them from having anything scientific.

Mr. Trask: I am sure there is a lot of technical and practical considerations that plenty of people may not understand.

Ms. Nakamura: Right. If that is really something...if that is a problem with the Department of Health not having the funds to do that, then is this County willing to put up some of the funds that it will take to move the device to do the measurement. That is something that I think is a broader policy question. Thank you.

Mr. Trask: Thank you.

Mr. Kagawa: I am kind of confused on the reference to "No-Burning Days." It is my understanding that residents can no longer burn rubbish at their houses. It used to be where it would come on the radio on windy days and say, "You cannot burn today. The Fire Department has deemed it dangerous." I do not know why we are referring to No-Burning Days because I thought that no one can burn anyway. Do you know anything about that?

Mr. Trask: I think that...I am not sure it is "No-Trash Burn" versus "Ag-Burn." I think some Ag-Burning is still allowed like banana leaves and things like that. Again, I think it depends whether there are Kona Winds or not. I am not sure, but itself is currently under their Agricultural Burning Permit Applications. You can get a permit from the Director of Burn, whatever the Director will allow you to burn, pursuant to permit. Without a permit, that is where this stuff comes in. Also, Ag-Burning or Conditionally Allowed Open Burning for subsection, "No-Burn Periods," that again, is regulated and I think those questions are more appropriate for the Department of Health. I can follow-up with you. I do not have the answers.

Mr. Kagawa: Okay, thank you. You answered my question, and Chair Furfaro, too, with his nod. I appreciate your comments to us and I believe what you said is true. It is the State's responsibility for the County to pass some kind of Ordinance to take care of what the State should be taking care of. That is how you can run into more problems. It really reminds me of this whole seed

company argument that the Westside people have. A lot of them are coming to us. A lot of them are even getting angry at us for not doing anything about the pesticides that the seed companies are using. Westside people are feeling that. It is affecting their health, their lives, but again, it is a point where the Department of Agriculture is who monitors that. For us to pass Legislation elbows, it can cause more problems. I appreciate your comments to us. The best way to fix this is actually to get the State Department of Health to get in and fix this problem. Hopefully, Chair, our Minutes will let Mr. Gill know that we are very concerned about this issue. I think for the residents, they are being harassed to a point where...I do not think the purpose is to keep warm. I think they are burning rubbish to irritate their neighbors, and hopefully we can somehow get some kind of resolution on this issue.

Chair Furfaro: Thank you. Mr. Hooser, you have the floor.

Mr. Hooser: Just a few questions. You mentioned, Mr. Trask, that the Fire Department did the inspection, and that complied with fireplace regulations. For those regulations, who put those regulations into play? Were those County regulations, State regulations?

Mr. Trask: Like our Building Code, there is a Uniform Fire Code. With Fire, the State passes their Fire Code. If we do not put our own Amendments within that State Fire Code, I think it is a hundred and eighty (180) days. Then the State Fire Code becomes our Fire Code. We recently did some Amendments last year, I believe. Councilmember Rapozo took care of that. I have to relocate them, but again, our inspectors are the practitioners. Per their investigation, (inaudible).

Mr. Hooser: That is under County authority?

Mr. Trask: Under our authority to regulate Fire Prevention and Fire Loss, not Air Pollution Control.

Mr. Hooser: It is Fire Prevention...

Mr. Trask: And Fire Loss.

Mr. Hooser: We have the power to regulate Fire Prevention and Fire Loss.

Mr. Trask: Correct.

Mr. Hooser: Fire Loss is?

Mr. Trask: Loss from fire.

Mr. Hooser: Okay. If it was a fire hazard, like it was really dry, and burning things that created a lot of ash...

Mr. Trask: It would be depending on facts and circumstances in any situation.

Mr. Hooser: The County has the authority to regulate fireplaces with regard to a fire hazard?

Mr. Trask: Yes, generally, the safety concerns because they can become combustible if they are built the wrong way. The smoke can go back into the house. There is a bunch of technical aspects.

Mr. Hooser: Right. It kind of goes to Councilmember Yukimura's question about use. If we are not regulating pollution, maybe we have the power of authority to regulate use.

Mr. Trask: Exactly.

Mr. Hooser: Therefore, we might have the power and authority to regulate what can be burned in the fireplace?

Mr. Trask: I think currently, you cannot...under the Department of Health, you cannot burn...even if you had a fireplace, you cannot burn toxic (inaudible).

Mr. Hooser: I am just talking about our authority and what authority we have. We may have the authority to regulate the use of a fireplace and not what is burned in that fireplace?

Mr. Trask: I would like an opportunity to look further into that. But yes, maybe we do.

Mr. Hooser: Okay. Again, I understand from your comments and the County Attorney's Office position is that this is a Department of Health issue or private action issue.

Mr. Trask: It is.

Mr. Hooser: I respect and acknowledge that position or opinion but the County Attorney's Office works for everybody, right? The Council has an opinion that they want to engage in this issue and put forward Ordinances to deal

with it. I am assuming you will help us find the pathway through this as appropriate we can?

Mr. Trask: Well, yes. We have to work with your Analysts in reviewing and working with them to find something, but I think Councilmember Rapozo appreciates the situation. You are looking at...you can look at Zoning, you can look at use, or you can look at Building. When you do that...if you take that term, you are going to look at a whole bunch of other issues. How those issues apply are like takings, retroactivity applications, grandfather, and things like that. That was always in the details.

Mr. Hooser: I understand this is complicated.

Mr. Trask: Yes.

Mr. Hooser: I certainly do not want to ban fireplaces. We do not ban televisions or stereos, but we regulate noise.

Mr. Trask: Exactly.

Mr. Hooser: A noisy neighbor could be a private right of action. It could be C.C. & R., but it is also a County Ordinance. Is that not?

Mr. Trask: It could be criminal, too.

Mr. Hooser: Right. I would just ask that we look at trying to find the path. We need the expertise and help from the County Attorney's Office to do this. To me, with just this brief discussion that we had, the use regulating the use; what can be burned in a fireplace would not be a taking necessarily. It might be that path of least resistance in terms of getting something on our books that would help deal with this situation. If you could help us with that, I would appreciate it. Thank you.

Mr. Trask: I will do my best.

Chair Furfaro: Any further questions for Mauna Kea? We have approximately five (5) questions that we are going to send over to the various Departments. You will be copied on all of them. The Minutes of today's meeting are going to go to the Deputy Director of Health, Mr. Gill, under my signature with the same type of questions incorporated into that Communication. To the members, now that this has been discussed informal, my correspondence files are available for any pursuit that you would want to do at this point, but I really appreciate you coming over and helping us with this discussion so that we understand, I guess the moving parts here. Hopefully, we will see more action from the State after they get

the Communications from this meeting. I am going to excuse you for now, Sir, and I am going to take public comments. Those that want to speak on item C 2013-43, the time will be available to you now. I do ask that you consider the fact that the posting was done with some parameters, and if you could give us your testimony, that will also be incorporated into our cover letter over to the State Department of Health. Mauna Kea, I will go ahead and excuse you.

Mr. Trask: Thank you, Chair. Thank you, Councilmembers.

Chair Furfaro: Is anybody signed up?

RICKY WATANABE, County Clerk: Yes, we have three (3) speakers who signed up. The first speaker is Ann Leighton, followed by Dustin J. MacDonald.

Chair Furfaro: Hi, Annie.

ANN LEIGHTON: Good morning, Council, and Mr. Trask. First of all, I want to thank Mr. Trask for the information that he provided. I learned a lot. Definitely, the County does not want to step on the toes of the State. Council, you had a lot of good questions too. It definitely helped to clarify the situation.

I am a non-smoker and I have huge issues with air pollution. I am also very physically active, which probably helps to keep my lungs clear. I remember back in the day when we all used to breathe sugarcane smoke when they were burning the fields. Nobody raised a fuss because everybody was working at the plantation. We have come a long way, baby. Then moving on to smokers, I remember one day in the shop, I was sitting back at my desk, and I was just enveloped in clouds of cigarette smoke. I finally walked out and said, "You guys want to smoke, you guys go outside." This was like thirty (30) years ago. "You go outside. I am tired of being choked out by your folks smoke. You are putting something in the atmosphere that was not there, and I have to breathe it. Out." That solved that problem. Then we moved on to commercial establishments banning smoking outside. Everybody raised all kinds of arcane about it. We settled it. We all get to go to restaurants and bars now if we choose to and breathe clean air, and if not, keep our bodies in somewhat good shape with the copious amounts of alcohol. At least we have got clean lungs.

Now we move on to public air pollution. I do not live on the same street as some of the other commenters and guests here today. We did have an issue on my street of an individual who has a fireplace. On calm cold nights, the air flows down the stream bed and comes right into all of our homes. Fortunately our neighbor was more cooperative than maybe some people are. He is a very good man. I went over and talked to him and I said, "I cannot breathe. Carol cannot breathe. Dustin, Jody, and their kids cannot breathe." He said, "Well, what am I supposed to do?" I

said, "If we cannot breathe and your fireplace is the source point, maybe you could think about putting out your fire." I went over and made an arrangement. If I get smoked out, I text "smoke," and he is supposed to shutdown his fireplace. We have an agreement. Why did I even have to go over there and do that? Why am I not protected by the Law from the actions by another person who infringes on my health, safety, and welfare? I am not asking for a Police State here. I am not asking for a ban on fireplaces. I am asking for some enforcement. It was commented that people come to the Council as a last resort because the Department of Health, although they have been granted the authority to regulate, do not do so. How many inspectors are on this island for D.O.H. Air Pollution Branch? There is only one. I can count them on the index finger on one hand. One person goes to the place of question, and maybe the guy sits there and says, "I never did that. Prove it. I never burned plastic. I never burned treated wood. I never burned anything in my fireplace that I was not supposed to."

Chair Furfaro: Annie, that is your first three (3) minutes. You have a second three (3) minutes.

Ms. Leighton: Thank you. Who is going to enforce? That is the question. Who is going to enforce? Does the County have the authority to submit something to the State D.O.H. to tell them that you get out here and enforce your own regulations? It is not a case of just one person complaining about another person. This is an island wide problem. We have twice as many people on this island than we have thirty (30) years ago. We all sit in the traffic. Look at all of the houses that have been built. Look at how many are crammed together now. We need enforcement. If the State makes the Laws and enables its Departments through the H.A.R. to enforce, then where is it? What authority does the County have to go to the respected State agencies and say, "Look, we have an issue here that you guys need to deal with." That is what I would ask. Thank you.

Chair Furfaro: Annie, our Minutes of this meeting will also be going to our Legislators. I did not say that earlier, but it will.

Ms. Leighton: Right. Okay.

Chair Furfaro: Councilmember Yukimura, you have the floor.

Ms. Yukimura: Hi, Annie. Thank you very much for coming because you say it is an island wide problem, but we have really been getting complaints from one neighborhood. It is good to know that there are other people having the same problem. It is real credit to you and your neighbor that, and I guess especially your neighbor, that you were able to work it out. You cannot have a Law that just governs the Act itself. The other part of the Law is the impact and unless people know they are having an impact on other people, it is hard for them to

alter their behavior. In your case, you had both the guts and the courtesy to go talk to you neighbor, and he had the empathy and consideration to work with you to come to an agreement.

Ms. Leighton: Yes.

Ms. Yukimura: When that happens, you do not need Laws. Where we need Laws are where there are neighbors who are not able or willing to understand their impacts on others and alter their behavior. That is where Laws come in.

Ms. Leighton: Right.

Ms. Yukimura: Your issue about enforcement...apparently it is not about money because the Department of Health...it may be a matter of equipment. But they have been...it is not a matter of personnel or time. They have spent a lot of time out there. Why they cannot find or establish that there is pollution and enforce is not clear to me. It has not been for a lack of effort because I think Mauna Kea said they have been out there fifty-two (52) times or something like that. I do not know where the problem is, but I appreciate so much that you came forward to share your experience and example.

Ms. Leighton: Another case, I was in a situation where I might have been downwind of the commercial kitchen. I commented on that and I said, "There are obnoxious odors." The owner of the commercial kitchen said, "Yes. So what are you going to do?"

Ms. Yukimura: That is where you need Laws.

Ms. Leighton: Yes. He essentially said, "Too bad." It is just really frustrating if D.O.H. did visit a certain site fifty-two (52) times, or however many, that they throw their hands up in the air because nothing has been done.

Ms. Yukimura: Yes. It is very frustrating.

Ms. Leighton: Why is it that only people who can afford to hire Attorneys get action? Maybe (inaudible) can hire Attorneys. Have any of you folks visited the site?

Ms. Yukimura: Mel, I think.

Ms. Leighton: Yes, and so you know.

Chair Furfaro: Annie, I want to clarify. It is not the Department of Health that has gone fifty-two (52) times. They went out about a half a dozen times. The County has sent our own inspectors on other items like Buildings and the Fire Department at my request.

Ms. Yukimura: Thank you.

Ms. Leighton: Thank you.

Chair Furfaro: Just to clarify.

Ms. Leighton: Thank you for clarifying that.

Chair Furfaro: Some of those were County people that were sent out.

Ms. Leighton: Laws are necessary, unfortunately, where you have mean spirited people who do not want to understand that their actions have an impact on other people. Like my mother used to say, "My rights stop where your rights begin." I am all for Libertarianism, however, unfortunately there are people out there who do need some regulating.

Ms. Yukimura: Thank you, Annie.

Ms. Leighton: Thank you very much.

Chair Furfaro: Thank you, Annie. Our next speaker, please.

DUSTIN J. MACDONALD: Aloha and thank you for putting this time together to have this meeting. My name is Dustin J. MacDonald. I am here for the smoke issue on chimneys. If I could pass these out to all of you. Here I have a picture for everybody to see the severity of this problem and what this issue really is about. My experience with this and this picture that you see here, is my first child that was practically an inch away from death, because of a person who refused to put out their fire. This happened to my son over a slow period of very faint smells of smoke. It was not a real heavy exposure. It was just a really light exposure that we got, but you can say "occupationally," because it was from us living in our house and our neighbors burning their trash and their wood and other things that they burned. We spoke to them a couple of times and they refused to put out their fire because it was their cultural practices, or whatever they had to do to get rid of their trash, food, and whatever. This happened all night, from the time we would go to sleep until the time we would wake up in the morning. It was not enough to drive us out of our house until we reached a point where it compromised our health. I am a pretty healthy person. I stay active, but now I cannot stand the faintest smell of



smoke. It drives me nuts. It goes straight to my body, and I cannot breathe immediately. I believe that is because I was exposed to these fires for at least three (3) to four (4) years, and eventually, after this, my son ended up in Kapi'olani Hospital with a tube coming out of his lung, because we were exposed to our neighbor burning smoke. The reality of this situation is fatal. It is not just something about what you can and cannot do that is a nuisance. This is a fatal issue. My son almost died from this, living in our own home. Like some of you pointed out, there is more protection in the front door of Safeway, than in my house. Now, when my neighbor burns his chimney, I load my children in the car and I go to drive down the street. I cannot even do my homework with my son in my house because I am getting smoked out from somebody. I do not even know where the smoke is coming from. The neighbor that Annie was talking about, he was very cooperative and fortunately for us, he chooses not to burn. He has not really burned his fireplace since we have talked to him, but there are other chimneys that I do not even know where they are coming from. The difference of chimney smoke and people grilling with food and barbequing is that you do not barbeque at two (2) in the morning. You are not barbequing from five (5) p.m. to eight (8) a.m.

Chair Furfaro:                      Excuse me, I just need to let you know, your first three (3) minutes went off. You have another three (3) minutes.

Mr. MacDonald:                      Now, the difference of that, if we were trying to make this Law is that when we are sleeping at night, we are stuck in our houses. What are we to do? I moved. The first problem was in Kapahi by Kapa'a School. Fortunately, I have relocated up in Wailua and attack, the same problem again. I do not even know where the smoke is coming from. I noticed that more and more people are building chimneys in their houses to accommodate their luxuries inside of their house. You have one house with a chimney and you have thirty (30) houses with smoke. It is not fair that in my house, my children have to smoke. My children are smoking. Period. It is fatal as you can see. This issue needs to be dealt with, with no ifs, ands, or buts. There cannot be anything like, "It is grandfathered in," because that is going to equal children dying. I am watching this situation reoccur with the Troop family that live right next door to my parents. Their child has already been to Kapi'olani with respiratory problems. I am jumping up and down telling them, "We have to do something because you do not want to go where I went with my child, and what I went through." I do not wish that on anybody. This situation is fatal. We have to have the fireplaces that are in neighborhoods converted into propane. There cannot be smoke burning into other people's homes from some other source. That is not fair. With nothing being done, you are going to create warlike conditions between neighbors, especially if neighbors that do not want to have sympathy for their neighbors and just want to keep doing what they want to do. Like the Lawyer said, your last line of defense is to protect your family yourself. When you are tapped out legally, what else is there to do? Now you have resorted to warlike conditions, I believe, because it is fatal.

The severity of this is death. We cannot look at this lightly. This situation is happening and now I notice there are more pockets in Wailua where there is smoke. It is becoming a more and more condensed problem. Like Annie said, there are a lot more people here nowadays. We have to do something like converting chimneys into propane. It is very painless. The conversion kits are there. I think it is only right that if you are going to have some type of amenity in your house, you should take the consideration to the other thirty (30) houses that are in your downwind. It is not fair that you get to make them smoke and compromise their health and their life for your enjoyment in your house. I ask you to relook at this situation as the severity that it is.

Chair Furfaro: Thank you.

Mr. MacDonald: Thank you very much.

Chair Furfaro: We have a question for you.

Mr. MacDonald: Yes.

Chair Furfaro: They are very specific to the fact that this is on the agenda because we do care.

Mr. MacDonald: I understand.

Chair Furfaro: That is the first thing I want to say. I also had phone conversations with you, and I want to make sure that when this situation happened with your son, were you able to document it and correspond to the Department of Health?

Mr. MacDonald: I went to Rod Yama before this happened when we first started getting smoked out, and I told him, "We are getting smoked out all night long by these people. They are relentlessly burning coconut husks, and whatever else carcasses; whatever they have in their trash. It is a traditional practice to have a fire pit where they live." He said, "There is nothing we can do because they are cooking on this fire." I said, "Well they are cooking all night long into my children's lungs."

Chair Furfaro: Did you document that?

Mr. MacDonald: At the time, I did not realize that this was going to turn into what it has. I did not, unfortunately.

Chair Furfaro: Okay. Could you give us a rough date of when your child was hospitalized?

Mr. MacDonald: He was three (3) years old. He is seven (7) now, so that was four (4) years ago. Just for the record, I spent three (3) weeks and all of my life savings to save my child because of somebody else's ignorance.

Chair Furfaro: Let me ask you, on the portion I think I had suggested to other sources, maybe from the legal standpoint. Have you looked towards someone like Legal Aid for some assistance?

Mr. MacDonald: We have tried to do a couple of different things at the time, but the easiest thing for me to do was to relocate my family and get away from the smoke because the people that I talked to basically told me there is nothing they could do. We went through the first round of the people back then. I do not know if everybody still remembers because that was before this problem snowballed into this. When it was a fresh issue, I spoke to as many people as I could. I even called Action Line to reach out there because nobody was helping me with this issue. I have spoken to the Department of Health, Rod Yama, and I do not know the other person's name, but he laughed in my face, over my son.

Chair Furfaro: Well, I am very sorry about that because there is compassion at this Council. I want you to know that we are going to send correspondence, appropriately. You have heard some of the questions we are going to raise. I want to assure you that we are going to do what we can within the parameters. That is why we put it on the Council Agenda. Thank you for your testimony today.

Ms. Yukimura: Aloha, Mr. MacDonald. Thank you for being here, and I am sorry for what your family has been through.

Mr. MacDonald: Thank you.

Ms. Yukimura: You mentioned relocating your family. Did you do that once already?

Mr. MacDonald: When I lived in Kapahi by Kapa'a School, I have a young family so we were just starting out. We were looking into buying a home. I lucked out and fortunately got to buy a piece of land in Wailua. That is where I relocated my family, up into Wailua. It was very pressuring. We were trying to get out of the smoke. That is what caused that.

Ms. Yukimura: Okay. Right now, you are in Wailua?

Mr. MacDonald: Yes.

Ms. Yukimura: You had problems in your previous house, too?

Mr. MacDonald: In both houses. I was again...once we moved into Wailua, there was a new home that constructed a chimney, two (2) doors down. I did not see that when we purchased the land, but after we were already set in, all of a sudden, six (6) months later, the first sniff of smoke came. I could not believe that this was happening everywhere. Like I said, after we spoke to that neighbor there was still smoke coming from other neighbors that I do not even know where it is coming...coming from over the hill. I cannot see. In Wailua, there are lots of veins of houses that are in the back of the valleys. The bad part is that it is not a necessity. We do not live in Arctic temperatures. You do not need a fireplace. This is an amenity. There are many other ways to heat your home. If you need to see a fire burning, I highly suggest that you convert your fireplace to propane.

Ms. Yukimura: In your Kapahi situation, did you try to talk to your neighbor?

Mr. MacDonald: Many times.

Ms. Yukimura: And there was no...

Mr. MacDonald: It turned into an aggressive situation because I do not want to say racial; I am not a racist person. There was a lot of racial tension that they would give off that I felt. Regardless, they refused to put out their fire.

Ms. Yukimura: That is the same situation now that you are experiencing. How long have you been in your second home?

Mr. MacDonald: Two (2) years now.

Ms. Yukimura: Okay. Let us see, in terms of trying some private legal remedies, you said that you...obviously, you had a lot of medical expenses, but is the problem with a private attorney...is one expenses, or have you been advised that there is no remedy in a private lawsuit?

Mr. MacDonald: To tell you the truth, I have never really looked into a private lawsuit.

Ms. Yukimura: Okay, I see.

Mr. MacDonald: I am very busy with my own life, and I would just hope that there was out of all the people that we elect as Officials, and everybody in the so-called "Government," I would just hope that there would be some vein or

channel that could protect us and give us fresh air in our home, not only in front of Safeway.

Ms. Yukimura: I understand what you are saying. It seems to be an area that should be governed by public law. The thing is, when you have a car accident, on the road, and somebody is at fault, that is not something the Council gets involved in. Sometimes, it is a matter between two (2) private people. That is where sometimes we have to abide by certain Laws or boundaries established by past laws. We are still trying to sort this out. I am not saying that, that is necessarily true, but sometimes you have bigger remedies in a private lawsuit setting because you can get punitive damages and all sorts of remedies like that if you can make your case. I just wondered if you had tried that at all, and what the barriers were to that.

Mr. MacDonald: I just did not have the money and resources to attempt anything like that.

Ms. Yukimura: Right.

Mr. MacDonald: I am barely making it as it is with my family, but something like that would have to...I just do not have the money to do anything like that.

Ms. Yukimura: Yes, okay. Sometimes, if several people are being affected, you can gather together in a lawsuit, and mitigate the fact that individually, you do not have enough money, but collectively, you might. I just wondered what your particular situation was. I think that is all. I thank you for coming here and I really sympathize with the problems you have to deal with.

Mr. MacDonald: Thank you. The reason why I would not want to go individually after a lawsuit is because I am not only here for my family, but I am here for all of the future children that would be even exposed to something like this. I do not wish this to be ever repeated again...so it will. If this continues with chimneys burning smoke in residential areas where children are getting affected, then it will happen again. I am already seeing it happen with the Troop family. Their baby has already been to Kapi'olani twice.

Ms. Yukimura: Tell me, what is it? The True family?

Mr. MacDonald: The Troop family. Dustin and Kanani Troop.

Ms. Yukimura: How do you spell their last name?

Mr. MacDonald: T, r, o, o, p.

Ms. Yukimura: Okay. I just want to pronounce it correctly. They are in the same neighborhood with the same problem or are they in another neighborhood?

Mr. MacDonald: They are in a different neighborhood.

Ms. Yukimura: They are in another neighborhood. It is important for us to know how widespread the problem is. Anne, is it in your neighborhood?

Mr. MacDonald: Annie is my neighbor.

Ms. Yukimura: Okay, so there was another fireplace that was a problem where there was a responsive neighbor who has adjusted or altered his behavior in consideration of your issues?

Mr. MacDonald: Yes, there was and we just pray that he keeps his fire out because as soon as he lights it up, within seconds, my house is filled with smoke. It is within seconds.

Ms. Yukimura: Okay. There are two (2) neighborhoods that you know of?

Mr. MacDonald: Two (2) neighborhoods, totally separate. It is still going on up in Kapahi where my old house is.

Ms. Yukimura: Alright, thank you very much.

Chair Furfaro: Thank you. We have no more questions for you. Thank you for your testimony.

Mr. MacDonald: Thank you for your time.

Chair Furfaro: Next speaker, please.

LORI ABBEY-MACDONALD: My name is Lori Abbey-MacDonald. I appreciate what Mauna Kea said about all of the stuff, but it was kind of over my head. I did not really get...but I did write down stuff because I had a brain aneurism which causes stroke, so I have short-term memory loss. If you are wondering why I email you folks all the time, it is because I will forget. I email myself when I do not email you if he has been burning. The problem with our neighbors, or actually the people that live next door to us, is that they burn their fireplace at night. They burn it when it has been eighty degrees (80°). I have calendars that I used to write it on. Kanani, our next door neighbor told me, "Why

do you not write it on the computer and send it.” So, I do. I wrote something out. First of all, the petition—you folks did see the petition of forty-three (43) of our neighbors? A signed petition came back to you folks back in February.

Chair Furfaro: Yes, it is in my file.

Ms. Abbey-MacDonald: Last February, it was sent to Mayor Bernard P. Carvalho, Jr., Senator Ron Kouchi, (inaudible) with the State Department of Health, Representative James “Kunane” Tokioka, and Councilmember Jay Furfaro. I want to thank you for listening to us and hopefully you can help us. I know this is a widespread problem across Kaua‘i. It is that most people are at work right now, or do not feel that if they say anything, it will matter. We did look into hiring a Lawyer. We paid two hundred dollars (\$200.00), and they said, “We cannot help you.” He did not even look at our stuff. It was just like, “Nope, I cannot help you.” I have been trying to contact other Lawyers which we really cannot afford, but I am trying to get someone to take it...I do not know what the term is called where they would get paid as if we won the case. Four (4) Lawyers have said that “Clean Air” is something that they cover. I have written to the Fire Department, to Gary Gill at the D.O.H., and Rod Yama, who has since retired. We really do not have any Clean Air Branch people on Kaua‘i right now because I do not think they have hired anybody to take his place. For two (2) or three (3) years, I have kept calling the Building and Planning Departments and I was told that the house was built with the fireplace. Well, I know it was not because we were one of the first four (4) houses built in that subdivision, and that house was not there. They kept telling me that they could not go back on microfilm. They just blew me off. Then Kanani Ornellas went down and then one day, the fireplace got shut down. When they finally got permitted, Mrs. Gonsalves sent me kind of scary letter...

Chair Furfaro: Lori, I am letting you know that was your first three (3) minutes. You still have the floor.

Ms. Abbey-MacDonald: Thank you. I will try to talk faster.

Chair Furfaro: No, just give us your testimony and we will see at the end.

Ms. Abbey-MacDonald: Since the fireplace, when they did get it permitted last year, they have burned it almost every day. They have gotten better this Fall, where you do not see the smoke, but last night, my husband filmed it. That is why I also gave you folks the video of the film of the smoke coming out of the fireplace, the compact disc. Did you folks see that? That is what it was like last night. It was gross. When the fireplace was shutdown, they barbequed outside, and they did that for eight (8) hours at a time. We have made numerous complaints to the Police and Fire Department. I had my carbon monoxide level checked, and it was high. Our

pregnant next door neighbor, the Doctor wanted to put her in an oxygen tent if she wanted to stay at home. Luckily, the baby was born and did not have problems.

Neil and I have been...I have been taken by ambulance twice, and two (2) other times, I was sent to the Emergency Room. My diagnosis was difficulty breathing due to chemical fumes and vapors. I had anxiety, vomiting, and hyperkalemia, which means my potassium was low. The second time was dyspnea, which is shortness of breath and nausea. The third one was acute chest pain. The fourth one was acute chest tightness with broncho spasms. Neil's one were acute asthma and the second one was chest pain. Maria, who lives with us now, she was put on oxygen in December because she has severe emphysema. She has also had a cardiac surgery. One of her valves was shutting so they put a stent in. One New Year's Eve day, I called her Doctor because he put her on prednisone and antibiotics. I told him that she was not getting any better so they said to bring her to the Emergency Room. At that time, she was admitted at the Emergency Room for six (6) days getting Solu-Medrol, which is an Intravenous (I.V.) Steroid and Intravenous (I.V.) Antibiotics. She has fell since she has been at our house and she broke her right humerus. They cannot really operate on her because she is not a...she is at risk. I was told by the Department of Health that it was not my job to monitor smoke from people's fireplace. "Hire a Lawyer." We cannot afford one, but...I looked up...if you want to see Neil's video, just ask him. He has got it on his cell phone. I have been looking up stuff and people, especially elderly or young children, the effects of wood smoke, or any kind of smoke, is harmful to you. If you have heart disease, it is a definite "no-no." I have Doctor's things from Maria's Doctor and one of my grandson's Doctor. Neil and I were told to avoid all smoke. The neighbors, they do not care. I have had a cerebral aneurism with a stroke, arthritis, and asthma. Neil has had chest pain and asthma attacks, which he has not had since he was a child. It has just come on in this last...since they have been burning all day. Our grandson was operated on at Kapi'olani for an empyema from smoke. I cannot tell you the exact days they were, but I usually send you letters unless it is minor, then I send myself a letter. We have four (4) air purifiers in our house, and one dialus air quality monitor, which frequently reads in the "poor" level range.

Chair Furfaro: I need to interrupt you here. Probably a minute ago, your six (6) minutes went off...

Ms. Abbey-MacDonald: I do not have a lot more.

Chair Furfaro: No, I am just going to ask if you can summarize.

Ms. Abbey-MacDonald: Okay. What I am asking is if the County Council...if people want to have fireplaces, I understand. For us sixty degrees (60°) is like what it is at thirty (30) on the Mainland. If they want to have fireplaces, I



believe that they should be allowed, but not to burn wood. Our neighbor burns trash. Like this morning, when I got up, I was walking my dogs and the neighbor lady said, "Those people are so gross, you can still smell it in the air. It smells like a sewer." When they burn stuff, they burn it afterhours. Who am I to call? I have called the Police numerous times. I had a Policeman tell if they were going to take me in if I called them one more time, but one of the Police Officers that we went to see one time told us to call them every time. We have not done that.

According to the E.P.A., a single fireplace burning ten (10) pounds of wood will generate forty-three hundred (4,300) times more polycyclic aromatic hydrocarbon (P.A.H.'s) than thirty (30) cigarettes. P.A.H.'s are carcinogenic. Wood smoke can depress the immune system and damage a layer of the lungs that protect and cleanse the airways. According to the E.P.A., toxic air pollutants are components of wood smoke. Wood smoke can cause coughs, headaches, eyes, and throat irritation. That is us. For vulnerable proprurations with asthma, chronic respiratory disease...those with cardiovascular disease, wood smoke is particularly harmful. Even short exposures can prove dangerous. That is Maria, Neil, and myself. Wood smoke interferes with normal lung develop in infants and children. We can never plan to have our family over to our house, because we do not know if they are going to burn. All of my kids live on the island. I have four (4) grandsons, but I am afraid to have them come over because they are more susceptible to getting bronchitis and pneumonia, which my oldest grandson was sent to Kapi'olani where he developed an empyema. The only way to get it out was surgery.

Chair Furfaro: On that note, I am going to basically take that as your summary. I have extended more...

Ms. Abbey-MacDonald: I am speaking for Kanani Ornellas Troop too, because she could not be here today. She asked me to speak for her.

Chair Furfaro: I am going to ask you if you had more testimony that you could give to us, later in writing, the Staff can record it. May I ask you, earlier you talked about some of the discussion you had with an Attorney. The term you were looking for was this contingency fee if you win the case, but have you thought about talking to Legal Aid? If you talk to Legal Aid, based on the facts of this medical history that you shared with us, could it be possible—I do not know the answer to this, but could it be possible that through Legal Aid, you could attempt to get a restraining order...

Ms. Abbey-MacDonald: I have tried to get a restraining order one time, and the Judge denied it. We have also tried to go to Kauai Economic Opportunity (K.E.O.) to speak with them in mediation. They refused to go.

Chair Furfaro: Yes, I see. There have been attempts with K.E.O. There have been attempts through the Court with a restraining order. That has failed as well?

Ms. Abbey-MacDonald: The Judge denied the restraining order against the fireplace.

Chair Furfaro: Okay.

Ms. Abbey-MacDonald: Our house...all Summer long, it would eighty degrees (80°) outside and they would be burning. Our houses had to be closed up even throughout the Summer. I know, it is disgusting.

Chair Furfaro: Okay. Lori, I just want to say to you that from the testimony we are getting today, you have heard me say that we are going to be getting everything put together, send over four (4) or five (5) questions to our County Attorney to review a little bit more, see if there is a Councilmember within his Committee that wants to look at other options that you might have here; and certainly all of the Legislators, as well as the Department of Health Deputy Director is going to get copies of today's...

Ms. Abbey-MacDonald: Gary Gill talks down to me. He is going to just blow you off. I can tell you that right now. That is what he did when we went to the thing where everybody was protesting. I do not know what that was for. What was that for, Neil?

Chair Furfaro: Okay. We are going to give him an attempt to speak on the notes that I am going to send to him. I grew up in Waianae, so if the guy is going to make "big body" to me, I am just going to make "big body" back. Let us be sure we understand that part of us helping you is to also see that we can take this issue to the level that is has to be. If you did not have the...what I want to say, that the ear of the Council right now to try and help, I hope we settled any doubts because we are going to get this to Mr. Gill. Hopefully, I think Mr. Rapozo had a few points that he wants to make today. He might be pursuing more after we hear back from them, but we are going to do it, Lori. I would hope that he would not treat citizens the way you just described. I certainly hope that he would not treat a representative like myself of the people of Kaua'i with that kind of abuse.

Ms. Abbey-MacDonald: I feel like Kaua'i is an outsider to him. They just do not care on O'ahu about us over here.

Chair Furfaro: That is the good and the bad news. We are going to try and pursue it. I do want you to know that we will follow-up with correspondence.

Ms. Abbey-MacDonald: Also, when (inaudible) said they did those fifty-five (55) inspections, my neighbor was watching when Rod Yama just drove through the neighborhood. He just drove by. I need to know who I could call at night. The Police, they say, "Why are you calling us?" That is what I was told to do by Trent Shimabukuro. That is what his name was.

Chair Furfaro: Okay. I am going to share this with you. We are always pretty sincere about follow-up here. I am not going to overpromise you, but I am going to tell you those things I just said we are going to do, we are going to do. Hopefully we will have some answers after that. It sounds like there are one or two (2) Councilmembers that may want to pursue this in their Committees. We have to go through this procedure. We are willing to go through this procedure. I just hope you can understand this is a...

Ms. Abbey-MacDonald: Look, Maria has been living with us since last Summer, and she just was put on oxygen because her breathing...

Chair Furfaro: I would appreciate it if you would let me finish.

Ms. Abbey-MacDonald: I am sorry.

Chair Furfaro: You interrupted me. I do not like to be interrupted.

Ms. Abbey-MacDonald: I am sorry, I do not mean to.

Chair Furfaro: I wanted to get my point across.

Ms. Abbey-MacDonald: Okay, go ahead.

Chair Furfaro: We are going to do what we can, sincerely. We will get back to you. Not through a Council Meeting, but we will get back to you of what kind of answers that we get. You deserve this attention. We do not walk away from our responsibilities, but we also have to understand what kind of authority we have. We all want to do the right thing, for the right reason, for the right people. We do, sincerely. Councilwoman Yukimura, you have the floor.

Ms. Yukimura: In defense of the Police, unless there is a Law they can enforce, they are not able to really help. That seems to be the problem.

Ms. Abbey-MacDonald: What if it is harassment? Like when they are burning at night?

Ms. Yukimura: Yes.

Ms. Abbey-MacDonald: That is what I was wondering.

Ms. Yukimura: Well, that is hard. There are issues of noise and barking dogs and things like that but they cannot come in unless there is a Law. Harassment if...if someone is physically threatening you, that is one thing but, burning of smoke is...I do not think...

Ms. Abbey-MacDonald: They know that it is hurting us.

Ms. Yukimura: They are unable to help and that is why you are asking for some Law and regulation and some enforcement.

Chair Furfaro: We will pursue this and we will get what we can to you, but please understand, we have some compassion for your problem right now, but we have to act within the Rules and the Law. Mr. Kagawa, you have the floor.

Mr. Kagawa: Hi Lori, thank you. I just want to let you know that every day I come to work and I read your emails. I feel your pain. I feel your family's pain. I grew up in an age where we burn rubbish all the time, but we have to change with the times as we see that things are not healthy for our kids, especially. We need to adjust our ways. Have you had any response from Senator Kouchi or Representative Tokioka?

Ms. Abbey-MacDonald: Tokioka has been nice to me. Kouchi has blown me off. I have never heard one thing from him.

Mr. Kagawa: What has Representative Tokioka done for you?

Ms. Abbey-MacDonald: Not much, but he has at least talked to me.

Mr. Kagawa: Has he said that he will introduce a measure to help you out or will he talk to the Health Department to try and get them to comply since he is above them...he is in the State Branch as your elected Official.

Ms. Abbey-MacDonald: Yes. He told me to do the petition, and that was last year. Here is the thing that was denied when I tried to do the restraining order.

Mr. Kagawa: He has told you to do a petition?

Ms. Abbey-MacDonald: Yes, but nothing has come of it.

Mr. Kagawa: Okay. Have you sent the petition to him?

Ms. Abbey-MacDonald: Yes. I sent it to five (5) people. I sent it all to the people that I read earlier.

Mr. Kagawa: Lori, in response to that, is that I have full faith that Chair Furfaro is going to do everything from our end. I think we are off to a good start. At least we know the faces with the names. My frustration is this...I have been in Office for exactly one month and ten (10) days, and I spent maybe thirty (30) to fifty percent (50%) of my time on issues such as these and Genetically Modified Organisms (G.M.O.'s) and Seed Companies. If I am going to spend all of this time, I might as well run for the State Legislature, because if I work on that, I can actually try and get something done to help the people on those issues. A lot of it, I know you folks take advantage. We have Hō'ike and Council Rules that allow you folks to speak, express your frustrations, and get answers, but again, it is a State problem. It will be most effective if the State people would serve their constituents. I will think about it and keep all of my options open. Mahalo.

Ms. Abbey-MacDonald: Well, I have been emailing Representative Tokioka...

Chair Furfaro: Excuse me, with our Rules, he made a statement. He did not pose a question.

Ms. Abbey-MacDonald: Okay.

Mr. Kagawa: Well, I guess my question to you is that will you pursue anymore correspondence with the Representative and Senator?

Ms. Abbey-MacDonald: Yes, well every time he burns I will write you folks because I will forget. This morning I was walking down the block and some lady that lives on the other side...not in our subdivision, but across the street said, "It smells so gross out here. I can smell it at my house." He was not even burning. That was only from last night.

Mr. Kagawa: Thank you, Lori. I will stay on this. I believe that you do need some kind of help. Thank you.

Ms. Abbey-MacDonald: Thanks.

Chair Furfaro: Mr. Rapozo, you have the floor.

Mr. Rapozo: Thank you, Mr. Chair. Thank you, Lori, for being here today, and your family. I was the one who told you, "Do not ever feel troubled by sending us emails. As often as you need to, please continue sending it." I do not

think I have received as many emails from anyone, regarding any issue, which says a lot. I think we had the discussion earlier, about is it an island wide problem. I think many people will call Planning or they will call Buildings, and they will be told, "Sorry, there is nothing to do." Then it ends. They live with it. What was described today by...that is your son?

Ms. Abbey-MacDonald: Yes.

Mr. Rapozo: Very articulate and very moving testimony, but I guess my question is, "If you could describe the smell?" I have heard it several times today that it is gross, or it is rotten?

Ms. Abbey-MacDonald: It smells like plastic sometimes. It smells like burning. It just depends what day of the week it is. Right before trash day, at night, he will burn all kinds of crap. One of our neighbor said he puts wet wood, and I am sure that that is what was burning last night because it was just all clouds outside. But he will do this in the Summer too, when it is eighty degrees (80°) because I have documented it.

Mr. Rapozo: I know you do. You do it well. We have every email message to prove that, so I am not complaining.

Ms. Abbey-MacDonald: I am sorry I have to do that, but I will not remember.

Mr. Rapozo: Do not apologize because it helps us make our job better. I will be pursuing, and I will be working with Councilmember Hooser hopefully, on figuring out a way to pursue not because Representative Tokioka sent us an email basically saying, "You guys go do some kind of Legislation." That is what we are trying to do. I still believe we can. I still think that we can pass, and I think Mr. Hooser said it best. If we cannot do it based on the Department of Health's regulatory authority, then we will go the (inaudible) way. I was not aware of the propane conversion kits available. Obviously, I do not have one of those fireplaces. I do not need one, but I am seeing the light. Ever since this issue came up, and as I drive around the island, I am seeing more fireplaces coming up. Again, in no way would I want to deny the homeowner the right to build a fireplace. This morning, where I live, if I had a fireplace, I would light it up because it was that cold for me. It was sixty degrees (60°). I was freezing. A fireplace would have been perfect. I would not deny that opportunity for anyone to do that, but I think it is important that we address the concerns. I think at this stage, where you have been shut down at all levels, and I have followed it through your E-mails, and messages and also from Kanani, who unfortunately could not be here today; but I think it is our duty and responsibility to find a way to fix this. That is what I intend to do and I think Mr. Hooser—thank him for bringing this issue up as far as looking as some

possible Legislative actions, and of course the Chair for bringing this to light because it is that important.

Ms. Abbey-MacDonald: Yes.

Mr. Rapozo: I am very optimistic that something will be done. Unfortunately, it just takes time.

Ms. Abbey-MacDonald: How much time are we looking at?

Mr. Rapozo: Depending on what we get back from the County Attorney's Office. We could get a Bill passed in as few as six (6) weeks. But it will not be six (6) weeks. I can tell you that right now, only because of the complexity of the issue. It will be a while before we get the questions answered from the County Attorney's Office because the legal research takes times.

Ms. Abbey-MacDonald: People can just...

Mr. Rapozo: But I have a feeling that after this Meeting is televised and after the newspaper reports on it, I think we will be getting calls and emails from others on the island that are being victimized by this type of behavior. We will see. All I can assure you is that we will do it as quickly as we can.

Ms. Abbey-MacDonald: Neil, and not my son Dustin, but Kanani's husband Dustin, has offered them to buy a gas fire place insert and pay for their gas for a year. Dustin did it three (3) times, and Neil has done it twice, but they said, "No."

Mr. Rapozo: Thank you.

Chair Furfaro: Lori, let me ask you something. I want to put this...first of all, you have heard from Mr. Rapozo as he was speaking for Mr. Hooser, these two (2) gentlemen are going to pursue it within their Committee. This is Council as a whole. I put the correspondence on the agenda so we can have this discussion, but in my return discussion to the Health Department; may I ask you if you would be acceptable if I asked the State to put some air quality control equipment in your house?

Ms. Abbey-MacDonald: Yes.

Chair Furfaro: You would? Okay, so I will plan to put that in my correspondence.

Ms. Abbey-MacDonald: I have asked them to bring their machine and they said, "It is too expensive and we are doing Nāwiliwili."

Chair Furfaro: Okay. I will put that in my letter to Mr. Gill and hopefully he does respond to me.

Ms. Abbey-MacDonald: Or to accept our air quality monitor, because we do have that.

Chair Furfaro: Okay. I will put that in my letter. Vice Chair, you have the floor.

Ms. Nakamura: Just one final question, Lori. Is that offer still on the table, that you would pay for a conversion kit and the cost of the propane?

Ms. Abbey-MacDonald: I do not know, because they have been offered...

Ms. Nakamura: ...As a way to...I just wanted to double check with you.

Ms. Abbey-MacDonald: I do not know because I did not make the offer. Neil and my next door neighbor did.

Ms. Nakamura: Neil, your son?

Ms. Abbey-MacDonald: Neil, my husband.

Ms. Nakamura: Okay.

Ms. Abbey-MacDonald: That would be something that we would have to speak with the next door neighbor.

Ms. Nakamura: Neil and Dustin need to speak to each other.

Ms. Nakamura: Okay.

Chair Furfaro: If you want to answer, you need to come up and speak in the mic.

NEIL MACDONALD: Hi, my name is Neil MacDonald. We have offered, like Lori said, three (3) occasions to pay for the gas itself for a year and he has refused to it.

Ms. Nakamura: Is that just for the gas or for the conversion as well?



Mr. MacDonald: The whole unit, the conversion unit, to install it, to hook up the gas, and pay for the gas. They have denied it every time. The last attempt was Dustin, my neighbor, Kanani's husband, was going to build this thing called a "Jet Fireplace" which burns wood so efficiently, it comes out to steam. He got gas tanks and he started building this thing but our neighbor...we thought he would help out a little, but he...it is like it is all of our doing, and I think Dustin has given up on it. I have basically given up on it too. I do not want to pay for anything now, after he has refused three (3) times. I have pretty much taken that off the table.

Ms. Nakamura: It is not on the table anymore?

Mr. MacDonald: Not anymore. Three (3) times...three (3) times and you are out.

Ms. Nakamura: Thank you.

Chair Furfaro: Neil, before you leave, is there anything you want to add to this discussion.

Mr. MacDonald: First of all, I want to thank everybody. Mr. Tokioka has been very helpful. He set-up a meeting when Governor Abercrombie came with...

Ms. Abbey-MacDonald: Gary Gill.

Mr. MacDonald: Yes, Gary Gill, and we met one on one. Jimmy Tokioka set that up. He was there, right? (Inaudible). He has been very helpful. I just wanted to clarify that.

Chair Furfaro: Okay. For clarification, the Councilmember that was at that, was that Mr. Chang?

Mr. MacDonald: It was Mr. Rapozo. Sorry, were you not there?

Mr. Rapozo: We met you...I met you folks at the Middle School.

Mr. MacDonald: Right, with Abercrombie?

Mr. Rapozo: Right. But we did not have a sit down with Gary Gill. You may have met with them earlier but...

Ms. Abbey-MacDonald: We met with Gary Gill, actually...

Mr. Rapozo: I would have loved to be there in the presence of Mr. Gill and the Governor but unfortunately, we spoke after the meeting.

Mr. MacDonald: Okay.

Chair Furfaro: You heard a commitment from Councilmember Rapozo on doing some follow-up here. Thank you, Neil. Lori, thank you very much for your testimony. Is there anyone in the audience that wants to testify before I call the meeting back to order?

GLENN MICKENS: Thank you, Jay. For the record, Glenn Mickens. I have a lot of compassion for these people. I thought their testimony was excellent. It is obvious that something has to be done. Since Mr. Trask stated, "Our County can pass an Ordinance prohibiting air pollution." In my opinion, the people who testified have more than made their case about a public nuisance from these fireplaces. I would high suggest that this Council pass such an Ordinance. It may not be quite that easy, but I thought that is what I heard...

Chair Furfaro: You may want to check your hearing a little bit.

Mr. Mickens: He did not say that you had that power?

Chair Furfaro: I just said maybe you really need to listen to the fine points of his testimony.

Mr. Mickens: Okay. I am sorry. I misunderstood what he said. As my dear friend Ray Chuan used to say, and I am sure you people heard this, "Let us not look at ten (10) ways to prohibit action, but let us look for one way to make it happen." As Mel pointed out before, I do think that this body is the core of last resort for these people. I do not think they have the money to pursue it legally. You have heard so much testimony about what they have tried to do to have some action taken. I think the ball is basically in your court at this time to do it. Jay, I heard you say that you are going to take all of the action you possibly can, how these Laws can be changed. Obviously, something has to be changed for the way it is going on. It cannot be like this gentleman said with his little baby and spent a fortune to keep his little baby alive. It is wrong. Thank you, Jay.

Chair Furfaro: Glenn, I just want to say that there has been compassion for this group. I know that at least three (3) clusters of various Councilmembers that have responded to these things, as well as the fact that I have over a year of correspondence asking for some specific ground work and parameter that they would recognize if we passed. We have come to this point. We will get those five (5) questions to the County Attorney, and we will send the correspondence from this meeting to Mr. Gill and the Legislators, but we are going

to let Mr. Rapozo lead the charge as he has offered from here in his Public Safety Committee.

Mr. Mickens: I appreciate that, and I am sure these people will too. The sooner, the better. Thank you.

Chair Furfaro: At that point, I would like to call the meeting back to order for discussion. Mr. Hooser, I will recognize you first.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Hooser: Thank you, Chair. Thank you for taking the lead on this and responding to the community of this issue and bringing it forward to our agenda today. I think it is an important issue. I will be working as Councilmember Rapozo said or indicated earlier, working with him on this issue to see what we can do. I am a little less optimistic actually, that six (6) weeks or...these things take time and I do not want people to get their hopes up too much. Since this is a public record and it will be forwarded to Mr. Gill, for the record, I know or worked with Gary Gill or Deputy Director of Health for a couple of years now. I find him to be a responsible, honorable man, overburdened with issues throughout the State. I am confident when he sees the message from this Council, he will relook at this issue and do the right thing with his authority to give it the attention that it deserves. I am confident of that and I want to thank the County Attorney's Office for coming. I am also confident that they got the message that we are looking for a path forward, that the Council, with their authority can exercise what is available to them, to deal with this issue. Certainly, some of us on the Council, if not the majority, believe philosophically that we have a responsibility. Even though the primary responsibility may be the State's and the Department of Health, we also have a responsibility that if other entities are not fulfilling theirs, then we need to look for a path to serve the community. I am hopeful again, that the County Attorney's Office will help us find that path. I am confident they will. I think I heard, "I will do my best," were the final words from the County Attorney's Office. I think good people giving us a little bit of thought can find a way forward to resolve this. It is clearly not just an individual, one family issue. It is clearly a growing issue. I think it comes with a growing community. This is perhaps the start of a larger conversation and how to deal with this throughout the community. Thank you, Chair. Thank you, members, for a good discussion.

Chair Furfaro: Thank you, Mr. Hooser. Thank you for your willingness to work with Mr. Rapozo on this thing. Thank you very much. Any more discussion? Mr. Kagawa.

Mr. Kagawa: Thank you, Mr. Chair. I am worried that if we go after “no fireplace ban,” how it will affect places that really do need the fireplaces. Some places, even outside of Kōke’e that are quite high up in elevation and actually use a fireplace regularly, and if we go with a no fireplace burning Law, we will open up a bigger can of worms. It is going to be tough, and that is why it is going to take some time. Should we try and help you on your individual situation for the MacDonald’s? Yes we should. I think the burning is unreasonable and we need to do something. Mahalo.

Chair Furfaro: Other members want to say anything? Mr. Rapozo, may I thank you for leading the charge on this after we get some answers back. Again, I just want to say that we will try our best, but I do not want to overpromise you. For the County Attorney today, it is not a clear path, but as Mr. Hooser said, we are going to try and find that path.

The motion to receive C 2013-43 for the record was then put, and unanimously carried.

There being no objections, the meeting was recessed at 11:15 a.m.

The meeting reconvened at 11:27 a.m., and proceeded as follows:

Chair Furfaro: We are back from our recess. I am going to ask the Clerk if we can go to the item dealing with the Boys and Girls Club.

#### LEGAL DOCUMENTS:

There being no objections, C 2013-44 was taken out of the order.

C 2013-44 Communication (12/17/2012) from the Director of Parks & Recreation, requesting Council approval of the License Agreement between the Boys and Girls Club of Hawai‘i and the County of Kaua‘i, which extends the lease of the portable building located at the Kaua‘i War Memorial Convention Hall (KWMCH), 4191 Hardy Street, Līhu‘e, Hawai‘i, 96766, TMK: (4) 3-6-002:009, adjacent to the parking lot and Līhu‘e Baseball Park, for youth activities.

- License Agreement:

Ms. Nakamura moved to approve C 2013-44, and refer to the County Attorney, seconded by Mr. Bynum.

Chair Furfaro: Because of her activities with the Boys and Girls Club, Councilmember Yukimura has recused herself.

*(Ms. Yukimura was noted as recused from item C 2013-44 at 11:27 a.m.)*

Chair Furfaro:                      Mr. Rapozo, you have the floor on this presentation.

There being no objections, the rules were suspended.

LEONARD A. RAPOZO, JR., Director of Parks & Recreation:    Thank you, Sir. For the record, Director of Parks & Recreation, Lenny Rapozo. We are here today to ask for your approval for a License Agreement for a term of five (5) years to support the activities of the Boys and Girls Club in the Līhu'e area. Their primary goal is to service kids at Wilcox Elementary School. We know of it as the old Prosecutor's Office, between the Convention Hall and Līhu'e Baseball, which are those green portables that has been in disrepair for some time. In discussion with the Boys and Girls Club, the Mayor, and Parks & Recreation; it has been about two (2) or three (3) years or so, and discussions with possibly using this building for these activities, and going through the process of how it will be best served in terms of an agreement, which brings us here today. In our last Capital Improvement Plan (CIP) Budget discussions, ninety thousand dollars (\$90,000.00) was provided as a grant through the Office of Economic Development (O.E.D) for their activities. Part of the money was used for building of a basketball court at their clubhouse in Kapa'a. The other portion of this money, of the ninety thousand dollars (\$90,000) will be used to help renovate this County facility for their use as well, so we are here requesting this. This is the representation from the Boys and Girls Club. We hope that you can support this Licensing Agreement.

JIM GAGNEY, Admin., Office, Boys and Girls Club Hawai'i:    Thank you for this opportunity to talk about this. Back in the 1960's, what was then called the Boy's Club of Honolulu, started offering programs and afterschool programs out of schools. What it really was in 1976, that the Boys & Girls Club of Hawai'i really got started when we opened up our first clubhouse, the Spalding Clubhouse, which is adjacent to Washington Middle School. That is definitely our preferred model. We know we are much more effective when we are operating out of our own building. It is also something that kids really appreciate too. They like having their own space. When buildings are not available, like I said, we run programs out of schools. We are basically a no-cost program. We charge a nominal dollar a year for the kids to join. We try to be a fun program. We know we need to attract kids to come in after school and partake of our programs. We also offer homework help, tutoring, and we help to promote kids's healthy living. The whole idea is to meet our mission of kids becoming responsible citizens. Our members are from ages seven (7) to seventeen (17). Basically, kids term out once they graduate from high school. Here on Kaua'i, we were invited to come here during the post-Iniki period where programs were really needed. We built a clubhouse in Kapa'a that we still operate. We also operate school based programs in the Waimea area and here in Līhu'e. We are deeply appreciative to the County of this opportunity for starting what will be the

first clubhouse in the Līhu'e area for the Boys and Girls Club. We think this is a perfect location, right near the school. We have a program operating out of the school now that services about a hundred (100) kids a day, and we think it will really grow with the ability to have our own clubhouse. Buildings are important to us, but what is key to us is our Staff. We have a tremendous Staff, and I am happy to say that we have some of those people here today who provide the day to day services to the kids. We have Auntie Lovey Harper, who is the Kapa'a Clubhouse Director. We have Auntie Bernadine Brown, who is the Waimea site Director. We also have Asaka Herman, who is the acting Līhu'e site Director. They are here to answer any questions that you may have.

Mr. L. Rapozo: I would like to add one other thing. In case you are not familiar with the area, Scott was good enough to put up the overhead. These are the buildings that we are talking about with the Licensing Agreement. They have access to possibly using all of these buildings. This is currently Līhu'e Baseball League (L.B.L.)'s clubhouse right now. This is the building that we are doing and I just wanted to briefly show some of the work that they have already done with the money that I had already spoken about. This is the actual work of...it was a collaboration of community to come and help and do this basketball court. To do a basketball court definitely takes more than ninety thousand dollars (\$90,000.00), but they are using part of this ninety thousand dollars (\$90,000) to build a court, as well as do the renovation work at the clubhouse. I just wanted to show the participation and the community support that they have had. The other thing that is also important with the Boys and Girls Club is that they also fill a gap. They fill a gap in the sense that in order for your child to qualify for what we know of it as "A+," afterschool, both parents have to work. There are some situations where...of course he had mentioned it being affordable, but there are some parents where they may have one parent working, one mom taking care of the kids, and this gives them an alternative to an afterschool program while she may have a toddler or an infant that is much more time-dedicated for her, and it gives them an opportunity where the kids can go after school. It does fill a gap for families like that where they can go to a positive environment. Also to Wilcox School, for the schools that they use, it is not a guarantee that the facilities will be available to them on a yearly basis. A lot of times, it takes the approval of the teacher that the rooms that they use, in order for them to do the work. This facility will give them a permanent place where they only have to be so dependent. In fact, this year we also had to try and make some accommodations at the Convention Hall when they did run into some problems so that they would have place for our kids to go after school. Of course, the Convention Hall can be very busy. I think it is good for our community. It is a good partnership that we have developed and we hope that you can support the licensing agreement. Thank you.

Chair Furfaro: Lenny, let me ask this question. As you know, anything that is twelve (12) months or less; it is approved by the Finance Director. Anything that is more than one year requires the approval of the Council as a lease.

Mr. L. Rapozo: Yes, Sir.

Chair Furfaro: Is this lease designed to be five (5) years with an opportunity to renew?

Mr. L. Rapozo: Yes, definitely.

Chair Furfaro: Okay, good. Then, do we know of the ninety thousand dollars (\$90,000) that was allocated in CIP, other than what portion of it went to the basketball court, how much will be reinvested in this building?

Mr. L. Rapozo: For the exact number, I would have to check with my good friend George Costa about that, but my last recollection was in the range of about thirty thousand dollars (\$30,000) that was used for the basketball court. The other sixty thousand dollars (\$60,000) was going to be programmed to renovate this building. I could get the exact number for you if that is your wish.

Chair Furfaro: I would. It will not hold up my decision today, but I think it is appropriate for the Council to have that detail.

Mr. Gagney: I can add something to that. The ninety thousand dollar (\$90,000.00) number we are talking about, that is the amount of funds we have remaining after the work that was done on the basketball court.

Chair Furfaro: The ninety (90) is the net?

Mr. Gagney: Right. We started with one hundred twenty (120). We have about; I figure ninety (90) left. We have been talking to a couple of local builders and we have gotten quotes that of course, are a little above that, but close enough so that we think as we negotiate with them, and we also hopefully will receive some in kind services like we did with the basketball court, and that we will be able to do all the work that is necessary within that ninety thousand (90,000).

Mr. L. Rapozo: We will still send over the exact.

Chair Furfaro: Can you give me a little idea of the scope of the improvement for the repair and maintenance?

Mr. Gagney: Sure. When we first looked at the building, we thought, "Wow, this looks like a lot more work." But when we got in and started

looking at the details, a lot of it is cosmetic. From the exterior, the roof does not need to be totally replaced. There are a couple of weak areas that need to be replaced, but the whole roof does not need replacing. Interior wise, it was replacing all of the doors that needed to be replaced. The front door needs to be replaced. The electrical system is basically in good shape. We need to replace fixtures and cosmetic wall board replacements and painting. The biggest jobs are the connection to the sewer and the installation of the new handicap ramp. There is a ramp in the front but we do not think it is usable. We have talked to one of the builders about replacing the ramp in the rear which would be easier to install.

Chair Furfaro: So floors, roof, sewer, lateral, and cosmetic pieces.

Mr. Gagney: Yes.

Chair Furfaro: Okay, thank you. Members, questions? Go right ahead, Mr. Kagawa.

Mr. Kagawa: First of all, I would like to thank you for all that you do for Kaua'i. I have seen firsthand what they do in Kapa'a and what a great job Ms. Harper does. A lot of kids benefit from that. I have even talked to the kids about it that help supervise with that program and they said they help the children with their homework, then let their energy out. What a wonderful job the Boys and Girls Club does in serving our youth. I just had one question, Lenny. I saw it from the top piece. I know the Lihu'e Baseball League and other people who use the baseball park, they use the restrooms. Do the restrooms include their building?

Mr. L. Rapozo: Unfortunately not. It is all part of Lihu'e Baseball's building. Maybe that is something we need to look at.

Mr. Kagawa: Okay. I am sure being a public restroom for the park users, I am sure it will be fine usage for the kids. I just wanted to know because in that picture, I could not tell which side of the Boys and Girls Club included the restroom. That restroom is with the L.B.L. side. Okay.

Mr. L. Rapozo: I know that in the building itself, there are toilet facilities in the old building.

Mr. Kagawa: Thank you very much. I am a hundred percent (100%) behind it.

Mr. Gagney: Thank you.

Chair Furfaro: Other members? Vice Chair.



Ms. Nakamura: Just to clarify, is it two (2) or three (3) portable structures?

Mr. L. Rapozo: There are actually three (3) available.

Ms. Nakamura: Three (3)?

Mr. L. Rapozo: Yes.

Ms. Nakamura: Okay. The intent is to use all three (3), make improvements to all three (3) structures.

Mr. Gagney: No, just the one, furthest to the left there.

Mr. L. Rapozo: The challenge is that one before...I think they have thought about moving it, so there is one that is kind of off. It is available to them if they want to use it. If they are not going to use it then we can look at other uses for that, including removal.

Ms. Nakamura: You are saying that you are going to use one of the buildings?

Mr. L. Rapozo: Yes.

Mr. Gagney: Yes, just the one unit.

Mr. L. Rapozo: That is one connected to each other.

Ms. Nakamura: There will be two (2) vacant buildings?

Mr. L. Rapozo: If you look at it, there are actually two (2) buildings connected to one.

Ms. Nakamura: Okay, I see.

Mr. L. Rapozo: There is one...it looks like they were going to move it at one point. It is available for him if he wants to use it. If they determine later on that they do not want it, then we will make it available for somebody else or we will just get rid of it, and get it off of the property.

Ms. Nakamura: Does the Boys and Girls Club have any immediate need for that vacant building?

Mr. L. Rapozo: Currently, they do not want it. I was hoping that since it is there, when they get done...I have seen their classes at Wilcox because my son is there, and there are a lot of kids. Maybe in the future, there may be a need for it.

Ms. Gagney: We are hoping to have that problem where we have too many kids and not enough space.

Ms. Nakamura: Okay, so you may want to grow into that.

Mr. L. Rapozo: Yes.

Mr. Gagney: That would be the best of both worlds.

Ms. Nakamura: Between the County funds and your own funds, you are going to try and rehab the structure to make it useable, then you would pay the ongoing maintenance fees and utility costs?

Mr. Gagney: Sure.

Ms. Nakamura: Okay. I just want to say that I think you guys fill this incredible need on this island and I just want to thank you and your Staff for the great service that you are providing for our youth.

Mr. Gagney: Thank you.

Chair Furfaro: Okay. Mr. Rapozo, you have the floor.

Mr. Rapozo: Thank you, Mr. Chair. I do not have Attachment (A) on the License Agreement, because it says of one portable building as referenced, or marked as exhibit (A). On the map, it specifically shows that?

Mr. L. Rapozo: Yes, what I had up there. That was supposed to be exhibit A.

Mr. Rapozo: Okay. That would be the one closest to the old Dairy Queen?

Mr. L. Rapozo: Yes.

Mr. Rapozo: Which is connected to...

Mr. L. Rapozo: That would be the old Prosecutor's and the Investigator's.

Mr. Rapozo: Just the first part of that connected...or is that connected part included in that one portable? Is that considered one portable or two (2)?

Mr. L. Rapozo: It is considered one portable.

Mr. Rapozo: But it is actually two (2)?

Mr. L. Rapozo: Yes.

Mr. Rapozo: Okay. That makes sense. Got it. Thank you.

Mr. Bynum: Thank you very much for all that you do. I had occasions to be at Boys and Girls Clubs a bunch of times over the years. I just had one question about the third building. Lenny, I know...hopefully we will have some use for it because it has been awkward there for years. It is great that we would use it. I know a number of years ago, Head Start Preschools was interested in those buildings, so I would hope that we find some community use for it and not leave it off the foundation sitting there for a long time. This is a great reuse of these buildings and I very much appreciate it. Thank you.

Chair Furfaro: Other members? Sounds like we seem to be satisfied with this action. Is there anyone else who would like to testify? If not, I will call the meeting back to order.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Members, are there any discussion? Go ahead, Mr. Rapozo.

Mr. Rapozo: I just want to say thank you to Boys and Girls Club. This is definitely going to help. Thanks to Lenny for facilitating this and making it happen. I always thought it was a waste to see those buildings sitting there, vacant. I knew there was somebody in the community who could use it, and what better organization than the Boys and Girls Club. You guys have been here for a long time, and I really appreciate what you guys do. I am very happy to approve this today and get those kids in some nice facilities and of course with the renovations that will keep those buildings, hopefully for you folks, for the next ten (10) years or maybe even longer than that. Thank you and good luck with this project.

The motion to approve C 2013-44 was then put, and unanimously carried.

*(Ms. Yukimura was noted back in the Council Meeting.)*

Mr. Watanabe: Chair, we are going back to page one (1) regarding Minutes.

MINUTES of the following meetings of the Council:

November 28, 2012 Council Meeting  
December 12, 2012 Special Council Meeting  
December 19, 2012 Council Meeting  
December 19, 2012 Public Hearing re: Bill No. 2458  
December 19, 2012 Special Council Meeting  
January 4, 2013 Special Council Meeting

Mr. Bynum moved to approve the Minutes as circulated, seconded by Mr. Kagawa, and unanimously carried.

CONSENT CALENDAR:

C 2013-26 Communication (12/14/2012) from the County Engineer, transmitting for Council consideration, amendments to Ordinance No. B-2012-737, as amended, relating to the Fiscal Year 2012-2013 Capital Budget, to transfer \$740,000.00 from the Piikoi Interior Renovation Phase II Project (W12053) to the Hardy Street Improvements (W12020) Project, which is necessary to assure adequate funds to meet the twenty percent (20%) match requirement for the Federal Highways Administration (FHWA) total funding amount of \$8,028,000.00. Additional FHWA funds have been secured to supplement the current Capital Improvement Project (CIP) budget of \$869,200.00 to fund the required total match: Mr. Bynum moved to receive C 2013-26 for the record, seconded by Mr. Kagawa, and unanimously carried.

C 2013-27 Communication (01/08/2013) from Councilmember Bynum, transmitting for Council consideration, a Resolution Supporting the Reauthorization of the Violence Against Women Act (VAWA) in a manner that expands, rather than limits, protections for persons who experience domestic violence, sexual assault, or stalking: Mr. Bynum moved to receive C 2013-27 for the record, seconded by Mr. Kagawa, and unanimously carried.

C 2013-28 Communication (12/14/2012) from the County Auditor, transmitting for Council information, the Comprehensive Annual Financial Report (CAFR), Single Audit Report, and Management Advisory Report for the Period Ending June 30, 2012. *(Copies of the CAFR, Single Audit Report, and Management Advisory Report on file in the County Clerk's Office.):* Mr. Bynum moved to receive C 2013-28 for the record, seconded by Mr. Kagawa, and unanimously carried.

C 2013-29 Communication (12/18/2012) from the County Auditor, transmitting for Council information, N&K CPAs, Inc.'s Independent Accountants' Report on Applying Agreed-Upon Procedures reflecting the Funded Indebtedness

Outstanding and Unpaid as of June 30, 2012: Mr. Bynum moved to receive C 2013-29 for the record, seconded by Mr. Kagawa, and unanimously carried.

C 2013-30 Communication (01/04/2013) from the Mayor, transmitting for Council consideration and confirmation the following Mayoral appointees to the various Boards and Commissions for the County of Kaua'i: (*Copies of applications on file in the Clerk's Office.*): Mr. Bynum moved to receive C 2013-30 for the record, seconded by Mr. Kagawa, and unanimously carried.

- (1) Board of Water Supply
  - Ross A. Nakashima – Term ending 12/31/2015
- (2) Fire Commission
  - Eugene Keith Jimenez – Term ending 12/31/2013

C 2013-31 Communication (01/04/2013) from the Mayor, transmitting for Council consideration and confirmation the following Mayoral Reappointments to the various Boards and Commissions for the County of Kaua'i: Mr. Bynum moved to receive C 2013-31 for the record, seconded by Mr. Kagawa, and unanimously carried.

- (1) Building Board of Appeals
  - Glen Satoru Taba – Term ending 12/31/2015
  - Duane Ray Curammeng – Term ending 12/31/2015
- (2) Board of Ethics
  - Kathleen Ann Clark – Term ending 12/31/2015
  - Warren C. R. Perry – Term ending 12/31/2015
- (3) Charter Review Commission
  - Jan W. TenBruggencate – Term ending 12/31/2015
  - Mary Lou Barela – Term ending 12/31/2015
  - Joel Dennis Guy – Term ending 12/31/2015
- (4) Civil Service Commission
  - Roy M. Morita – Term ending 12/31/2015
- (5) Cost Control Commission
  - Laurie Lynn Koike Yoshida – Term ending 12/31/2015
  - Dirk Kapualani Joseph Apao – Term ending 12/31/2015
- (6) Fire Commission
  - Clifton J. Miranda – Term ending 12/31/2015
- (7) Liquor Control Commission
  - Josephine Ann Sokei – Term ending 12/31/2015
- (8) Police Commission
  - Bradley Chiba – Term ending 12/31/2015
  - Ernest L. Kanekoa, Jr. – Term ending 12/31/2015
  - James Raymond O'Connor – Term ending 12/31/2015
- (10) Salary Commission

- Jo Ann Shimamoto – Term ending 12/31/2015
- Michael Chavez Machado – Term ending 12/31/2015

C 2013-32 Communication (01/04/2013) from the Council Chair, transmitting for Council consideration a Resolution confirming Council Appointee Theodore Kawahinehelelani Blake to the Public Access, Open Space, and Natural Resources Preservation Fund Commission (Kōloa-Po'ipū-Kalāheo). (*Copy of application on file in the Clerk's Office.*): Mr. Bynum moved to receive C 2013-32 for the record, seconded by Mr. Kagawa, and unanimously carried.

#### COMMUNICATIONS:

C 2013-33 Communication (12/18/2012) from the Director of Finance, transmitting for Council information, the Schedule of Fund Balances for the Fiscal Year Ended June 30, 2012, pursuant to Section 19.14 of the Kaua'i County Charter: Mr. Rapozo moved to receive C 2013-33 for the record, seconded by Mr. Bynum, and unanimously carried.

C 2013-34 Communication (12/26/2012) from the Chief of Police, requesting Council approval to accept and utilize a vehicle acquired through the Asset Forfeiture Program. The vehicle will replace a previously disposed of vehicle (Dark Blue 2000 Honda Odyssey Van LX, VIN# 2HKRL1852YH519618) assigned to the Vice/Narcotics Unit and be used for law enforcement purposes: Ms. Nakamura moved to approve C 2013-34, seconded by Mr. Rapozo, and unanimously carried.

C 2013-35 Communication (12/17/2012) from the Chief of Police, requesting Council approval to expend Asset Forfeiture Funds (Account No. 206-1001-551.30-00) to purchase a Power Document Management System (DMS) Suite computer software program for \$12,500.00 and a \$2,500.00 standard fee to provide each employee of the Kaua'i Police Department a user license for three (3) years. The Power DMS Suite is a recommended computer program by the Commission on Accreditation for Law Enforcement Agencies (C.A.L.E.A.): Mr. Rapozo moved to approve C 2013-35, seconded by Mr. Bynum.

Chair Furfaro: Councilmember Yukimura.

Ms. Yukimura: I have a question about whether the Police Department has been working with the Information Technology (I.T.) Department on this? I am worried about interface with all of the software.

Chair Furfaro: Can we bring someone over? Scott, would you make that call?

Ms. Yukimura: From both Police and I.T.

Chair Furfaro: Okay, let us put that one on hold for a second. Let us go to the next item, please.

C 2013-36 Communication (12/14/2012) from the Director of Finance, transmitting for Council information the Condition of the County Treasury as of November 2, 2012: Mr. Bynum moved to receive C 2013-36 for the record, seconded by Mr. Rapozo.

Chair Furfaro: Anyone wanting to testify on this in audience? If not, members discussion?

Mr. Rapozo: I see Sally here. I am not sure if they were going to be prepared to give us an overall briefing or summary of the condition of the County Treasury? It is basically as of November 2<sup>nd</sup>, so it is several months old. I guess not because she just walked out.

Chair Furfaro: No, I think she was trying to communicate. Do we want the Treasurer over here? Sally, can you respond to this question or do you want us to get the Treasurer?

SALLY MOTTA, Deputy Director of Finance: He is on his way over.

Chair Furfaro: Okay, he is on his way over. We will come back to that.

Mr. Rapozo: Thank you.

Chair Furfaro: Next item.

C 2013-37 Communication (12/17/2012) from the Executive on Aging, requesting Council approval to receive and expend State funds in the amount of \$170,485.00 for the provision of two (2) evidence based programs which include the Chronic Disease Self-Management Program and the EnhanceFitness Program, and to indemnify the State of Hawai'i, Executive Office on Aging: Mr. Bynum moved to approve C 2013-37, seconded by Ms. Yukimura, and unanimously carried.

Chair Furfaro: Thank you. Let us go to the next item, please.

C 2013-38 Communication (12/10/2012) from the Director of Finance, requesting Council approval to dispose of government records in the Department of Finance, Accounting Division, pursuant to Hawai'i Revised Statutes (HRS) 46-43(c) and Resolution No. 49-86 (1986), as amended. The reports and records have met the seven (7) and ten (10) year retention periods:

## (1) Seven (7) Year retention:

- Cash Receipts: 2002 to, and including June 30, 2005,
- Payroll checks: 2004 to, and including June 30, 2005,
- Accounts Payable cancelled checks: 2003 to, and including June 30, 2005,
- Accounts Payable Registers: 2004 to, and including June 30, 2005,
- Inventory Files: 2003 to, and including June 30, 2005.

## (2) Ten (10) Year retention:

- Accounts Payable: November 2001 to, and including June 30, 2002.

Mr. Bynum moved to approve C 2013-38, seconded by Mr. Kagawa.

Chair Furfaro: Councilmember Yukimura.

Ms. Yukimura: Yes, I do not have any problems, as long as there is a real clear record, because I am worried about what has come out of the Audit about the tracking of our personnel time and payments. I am just curious as to what kind of records there are besides the checks to make sure everything is okay.

Chair Furfaro: Okay, let me ask Sally to come up. For the payroll register, is being requested to be disposed through the payroll periods of 2003 to 2005. That will leave us seven (7) years of payroll records. Is there anything that we should be concerned with, with those two (2) years, '03-'05, as it relates to any possible information that we might have to reconcile, past payrolls as pointed out to us in the recent Audit?

There being no objections, the rules were suspended.

SALLY MOTTA, Deputy Director of Finance: Hi, I am Sally Motta, the Deputy Director of Finance. I do not have an answer to that as far as my understanding that we do have everything scanned. That is a permanent record and accepted that way at this particular time.

Chair Furfaro: Well, if that is your understanding, then we assume you are correct. But I wanted to make sure we understood those two (2) years have surfaced as a documented Audit Trail in the recent Audit. If we have that, and you are sure that we have that...

Ms. Motta: I will double check that before we proceed with destroying anything to make sure that it is what I understand it to be.



Chair Furfaro: So are you telling us that you are willing to allow us to vote, but it will be conditional...

Ms. Motta: Make it conditional, please.

Chair Furfaro: Okay. Mr. Rapozo.

Mr. Rapozo: Thank you, Mr. Chair. Sally, am I to understand that...this request is for the physical destruction. You guys are going to actually shred it? Am I correct?

Ms. Motta: Say that again?

Mr. Rapozo: This request is required prior to any physical destruction of records in Finance? That is what this is, for us to approve the physical...I think this thing says it is the "disposal." I am assuming that it is properly disposed, that in fact if it is personal information, it is going to be shredded and not just put at the landfill.

Ms. Motta: We actually hire a company that comes in and shreds them on sight.

Mr. Rapozo: Okay. The records...I just want to make sure because this is a question that I was going to ask; these records are not disposed of? We still have an electric file of every one of these records? I think that is kind of what Councilmember Yukimura was concerned about. Do we microfiche these records before we dispose?

Ms. Motta: Again, it is my understanding that we are beyond microfiche documents. We are now going forward in scanning.

Mr. Rapozo: Yes, I am sorry, scanning.

Ms. Motta: Microfiche is only good as long as the film lasts.

Mr. Rapozo: I misspoke. Not microfiche, but scanning. In fact, there is a permanent record of cash receipts from 2002 to 2005. There are electronic records of the payroll checks from 2004 to 2005. That is interesting, just one year. I just want to make sure that there is some sort of record, and it would be a scanned record, before we start destroying records.

Ms. Motta: That is what I am going to double check on and make sure that is the case and that why the conditional approval is fine with our Department.

Chair Furfaro: Before we go any further, the question was not about all of these items; the question was about the payroll register. The payroll register came up as a question in the Audit. Are we talking about all of the records because I only called her up about the register?

Mr. Rapozo: Mr. Chair, I am asking about all of the records.

Chair Furfaro: Okay, so we will defer this for two (2) weeks if we are talking about all of the records.

Ms. Motta: Okay. That is great.

Chair Furfaro: If we were just talking about the payroll register, then we can go with a verbal one. Mr. Hooser.

Mr. Hooser: I would only suggest that these communications be rewritten. It clearly says disposal of records. It does not say paper records. It says, "We no longer need these. We no longer value. We need to dispose of...we are disposing records." I think this is information that we need to make sure is preserved. If there is no urgency to do it today, I believe rewriting it so it is very clear that it is paper files and the electronic records are on file. It clearly says in many locations to destroy records.

Chair Furfaro: Sally, thank you very much for that. I am going to ask that we defer this for two (2) weeks. We will send you a question that you can respond to.

Ms. Motta: Right. Thank you.

Ms. Yukimura moved to defer C 2013-38, seconded by Ms. Nakamura, and unanimously carried.

C 2013-36 Communication (12/14/2012) from the Director of Finance, transmitting for Council information the Condition of the County Treasury as of November 2, 2012: Mr. Bynum moved to receive C 2013-36 for the record, seconded by Mr. Rapozo.

Chair Furfaro: Now that I see Dave here, I would like to ask him to come up. I would like to go back to item C 2013-36, which references conditional information that you sent to us regarding the County Treasury. There seems to be a couple of questions.

Mr. Rapozo: Thank you, Dave for being here today. I was just hoping we could get a brief summary. I know we each had a briefing last week from the Finance Department. I have seen the communication that came over and it is just a lot of numbers to the general public, who might be interested, but more specifically to us as Councilmembers as we get near the Budget period.

DAVE SPANSKI, County Treasurer: What we got on the screen, what you got on your first, is a full Fiscal Year cash flow, if you will. How revenues and disbursements come in. It is black to you guys but on the screen, the red line is your disbursements and the dark line is your revenues. At the bottom line, it says net excess and deficit. We run in deficit ten (10) out of the twelve (12) fiscal years.

Mr. Rapozo: I am sorry, ten (10) out of the twelve (12) months of the fiscal year?

Mr. Spanski: Right. That just gives you a...on the right hand side, what I have tried to do was exclude all housing like Pa'anau, Kālepa, because they are "Enterprise Funds." I take out like CDBG, Section 8, then all of the Trust Funds and all of the Board of Water and our Trust and Agency Funds. I do not look at each individual fund and say, "The General Fund is this, the Beautification Fund is this..." I have got to look at the bottom line at the whole picture. As you can see at the chart, with all of those categories, we ran into cash flow negative of nineteen point nineteen (19.19) million dollars. For the next chart, this will give you a...here we are to December, fiscal year 2013. We are already running at a negative nineteen and a half (19.5). You can see the spike in August with Real Property Tax...this and that will carry us out until we get the spike again in February. That is 2013. The next chart...I cannot lay them on top each other. Here is 2012, same time period. At this point last year, we were negative fourteen point one million (14.1), now we are at nineteen point five (19.5) at this point a year later.

Mr. Rapozo: Do you know what the cause of that would be?

Mr. Spanski: Yes, increased expenditures and less revenue.

Mr. Rapozo: If you could go back to the next line. This is the current Fiscal Year we are in?

Mr. Spanski: Yes, this is as of end of December.

Mr. Rapozo: That basically starts...

Mr. Spanski: July, August, September, October, November, and December.

Mr. Rapozo: The spike is the Real Property Tax revenue that we pay twice a year?

Mr. Spanski: Correct.

Mr. Rapozo: We are on track to probably maybe negative thirty-eight million (38,000,000.00)?

Mr. Spanski: No, you are going to get your spike in February. So it will all smooth out. Say for example, you want to go your current burn rate. Last fiscal year twelve (12) ending, we had...our reserve went down nine million (9,000,000.00). If you take the year on year, it was fourteen point one (14.1) last year, it is nineteen point five (19.5) this year. That is an additional five (5) so soon, the nine is going to be fourteen (14). There is a longer chart. I do not know if it will fit on this...the last one...the legal size paper, it gives you a cash flow analysis. It is a three (3) year and I have 2013 just as reference so I just followed up as I go. As you can see, historically, the bottom line says net excess. Like July, you can see (inaudible) twenty-three million (23,000,000), historically. This is just the last three (3) years; 2010, 2011, 2012 actuals. Then, August is your spike of positive twenty-five (25), this is a three (3) years to a core average. September, usually minus eleven (-11). October, minus sixteen (-16). November minus fourteen (-14). December, normally minus eight (-8). For example, if you want to narrow it down, for example in July, I know I am going to be in a whole twenty-three point four (23.4) million, so I know I am going to have that amount available that month.

Mr. Rapozo: Okay, thank you.

Chair Furfaro: Dave, I want to tell you, I had some discussion with Mr. Heu on an item that is coming up on our agenda that deals with the Enterprise Funds and the change dealing with going into revenue earnings. One of the things I wanted to point out, I am in coordination with Gary. I have a series of questions that I am sending over. I will be concurring with them a deferral on that item for a couple of weeks. What I want to make sure we all comprehend that this is really a snapshot of the County's cash flow that deals with the situation. Three (3) years ago, our revenues for taxes were about ninety-one million (91,000,000). The revenue for taxes in this projection is about seventy-nine (79). I want to make sure that the Department Heads that we are dealing with that are Enterprise Funds that actually do not run as Enterprise Funds; which is why we want to change that because they do not make a profit i.e., Golf Course, a million bucks and so forth. The part that nobody sees the reality which is that we need to be able to communicate to them the fact of the matter is they also have to be involved with some cash flows projections about expenses in those Departments. Would you concur with me?

Mr. Spanski: Yes, Sir.

Chair Furfaro: You have to understand cash flow before you let it scare you. We have got a sequence over here that is going to change from the way we are doing business by going to these revenue funds that I want make sure the Department Heads understand a different approach to this. I want to make sure that is communicated to them. On that item, I am going to asking for a two (2) week deferral. I think Gary has signed off with that with Sally. We are getting to this point that you could kind of pack an idea that revenues are coming twice a year and we need to manage our payments. The Department Heads have to be involved with that.

Mr. Spanski: Right.

Chair Furfaro: Would you agree with that?

Mr. Spanski: That is true, but you have to keep in mind that our debt service payments are August...are late July, because you have to be there a couple of days before to make sure that the funds are available for the holders. We have got August...August ends, say February 1<sup>st</sup>, and you have the spike. You have a bigger spike in August because you have got principal and interest. In February, you have interest only.

Chair Furfaro: Yes, but I just want to make sure that Housing, Solid Waste, and Golf; the guys that have the Enterprise Funds that we are changing, understand that and it would not hurt us to put...

Mr. Spanski: Yes. Also usually July or late June, we will pay the Other Post-Employment Benefits (O.P.E.B.). That is also a large chump.

Chair Furfaro: On that note, we ask for a response from Ernie Barreira on the assumptions we are making for O.P.E.B. next year. Questions on the treasury report? I will start with you, JoAnn, then I will go to Vice Chair Nakamura.

Ms. Yukimura: Thank you. I am glad that we are going to defer the item on Enterprise Funds. I appreciate that because I have some questions too.

Chair Furfaro: I will distribute the Memorandum that came from Sally, too.

Ms. Yukimura: Dave, thanks for being here. Forgive me, but the (T). and (A). Funds that excluded are...what did you say?

Mr. Spanski: Trust and Agency would be like...we collect for the State, Motorvehicle, so I excluded those. I excluded the Trust Funds out of there also because it is held for somebody else.

Ms. Yukimura: Like our Open Space...

Mr. Spanski: No, that is included.

Ms. Yukimura: That is included?

Mr. Spanski: Yes.

Ms. Yukimura: Okay. Your Trust Funds then are for example, which ones?

Mr. Spanski: Every Department has a Trust Fund. Like Planning has a Trust Fund. Those kinds of Trust Funds.

Ms. Yukimura: Right. They are not available for expenditures in other words.

Mr. Spanski: Yes, that is correct.

Ms. Yukimura: Okay. The Open Space Fund is available only for restricted expenditures, not as a General Fund.

Mr. Spanski: When push came to shove, I think you might change the Law to use that.

Ms. Yukimura: That would be a violation of the Charter, I think.

Mr. Spanski: You folks, the voting body, can change it.

Ms. Yukimura: No, the people of the island have to change the Charter. I do not know why it would be included in your...

Mr. Spanski: If you want to do that, in the worst case, it will make it one point five million dollars (\$1.5) less if I pull that out.

Ms. Yukimura: Do you not think because...

Mr. Spanski: In the Open Space Fund, there is not a lot of money that goes out.

Ms. Yukimura: Right.

Mr. Spanski: That kind of money...there is not a lot of expenses that go. When you say "Open," I am trying to think back if I...because there are no revenue because if you transfer from the General Fund to that...

Ms. Yukimura: Right.

Mr. Spanski: Basically, the only thing that is in there are the expenditures. Every once in a while, I will see an expenditure from the Open Space, probably less than a hundred dollars (\$100.00) in a month.

Ms. Yukimura: When acquired the Black Pot Beach Property then it was like about...

Mr. Spanski: That was all used from Bond Fund Money, from my understanding.

Ms. Yukimura: No, it was not. It was the first time we actually used the Open Space Funds, I believe.

Chair Furfaro: There was some contribution from Open Space, and the majority of that from the Bond.

Mr. Spanski: The number is not...what I showed you was just a cash flow. It is not what is sitting there as Reserve or something out there. This is just how the expenditures come in and out.

Ms. Yukimura: Right. The Open Space Fund...

Mr. Spanski: The Open Space Expenditures are in there but the Fund itself, is not.

Ms. Yukimura: Okay, that makes sense.

Mr. Spanski: Yes.

Ms. Yukimura: Thank you.

Chair Furfaro: I wanted to reiterate that this is just a picture of cash flow.

Mr. Spanski: Right. Exactly. Sometimes people look, "You went negative in the General Fund." But if you go to the Bank side, there are no negatives in the bank.

Ms. Yukimura: Right now, we do have Enterprise Funds. Are those moneys included in this cash flow?

Mr. Spanski: The Enterprise Funds is what would be in there. (Inaudible) would be like the Sewer expenses and Golf expenses.

Ms. Yukimura: What about the revenues? The fees?

Mr. Spanski: Yes, those are all in those two (2).

Ms. Yukimura: Okay, I just wanted to understand it.

Mr. Spanski: The only Enterprise Fund quote that is not in there is Housing like Pa'anau, Kālepa, Community Development Block Grant (C.D.B.G.) and Section 8.

Ms. Yukimura: That seems appropriate because they are not really available for other uses.

Mr. Spanski: For other uses, that is correct.

Ms. Yukimura: For regular expenditures, is that right?

Mr. Spanski: Right.

Ms. Yukimura: Okay. If we make a change from Enterprise Funds to Special Funds, there would be no change in how you show those in cash flow.

Mr. Spanski: No, I am not from the Accounting Division, but I think it is just to properly recategorize now.

Ms. Yukimura: Okay. Forgive me for asking what might be a stupid question but, what is anything, do we have to be concerned about?

Mr. Spanski: Your downturn in revenues and your increase in expenditures. I do not know how to put it in any...that is what I would be concerned about.

Chair Furfaro: Lower plusses and bigger minuses.

Mr. Spanski: That is correct.

Ms. Yukimura: Theoretically...okay the Budgets are estimates so, we would not have a problem if we stay...if our budgetary figures are below the substantially below the...wait, our budgetary estimated expenditures are below the estimated revenues, right?

Mr. Spanski: That does not matter to me. I am just dealing with the money.

Ms. Yukimura: Well, but I am saying...

Mr. Spanski: How it comes in and goes out. That is all...

Chair Furfaro: Let me summarize this real quick. I copied all of you on my testimony to the Cost Control Commission. Part of the budgeting process is the fact that it does not help us when those Department Heads over budget.

Ms. Yukimura: Right.

Chair Furfaro: Overbudget. Also, the testimony that I gave to the Cost Control Commission is the fact that in the private world, we call that the "above the line," the kind of expenses that the Divisions can control. The piece we are missing is the "below the line," which is like O.P.E.B. and so forth that the



Department Head cannot control. That is mandated by negotiations and so forth. In this year's budget section, we ask them to give us a trend for the last three (3) years. We do not want to know what we budgeted three (3) years ago, we want to know what we actually spent. For year two (2) and how far are we with the actual for this period and what that variance is, because that is what contributes to the overestimates.

Mr. Spanski: Right.

Chair Furfaro: We need to tighten that up. Once we tighten that up, that should help us with managing cash flow, because you are going to put in more like a trend number than just a wish list number.

Mr. Spanski: What I am selling you is just what the actuals are.

Chair Furfaro: Right. That is the trends. The trends will be actual. But what the Department Heads are used to is, "Well I budgeted last year." I do not care what you budgeted last year. I care what your actuals are.

Mr. Spanski: Yes, because there are some instances where you may think there is a Federal program, for instance Driver's License. We are going to do this this year then it gets pushed back, but you Budget for that. Then it is out, and it is in the next year, but you get questions where you have to justify why it is back in.

Chair Furfaro: Okay, we are back to the cash flow item that is here, or the status of the Treasury Report. Vice Chair Nakamura, then Mr. Kagawa, we will go to you.

Ms. Nakamura: Thanks, Dave for this and for this cash flow analysis for the past three (3) years. This is a very useful tool, and I just wanted to go to your first statement that in 2012, ten (10) out of the twelve (12) months, we ran a deficit?

Mr. Spanski: Right.

Ms. Nakamura: But it looks like...in looking at your first sheet here, it looks like it is four (4) out of the twelve (12) months. I just want to confirm that I am reading it correctly.

Mr. Spanski: Yes, well there is one where December is zero (0), January is one (1), but if you go to 2013, the next one, December was negative two (-2). That trend is going to be ten (10) months out of the twelve (12).

Ms. Nakamura: But in 2012, it was four (4) out of the...

Mr. Spanski: Right, but we are not talking...

Ms. Nakamura: Seven (7) out of the twelve (12)...

Mr. Spanski: We are not talking big numbers. December was basically point four (0.4), four hundred thousand plus (+400,000.00); January was a million plus (+1,000,000.00).

Ms. Nakamura: Okay, but typically it is about ten (10) out of the twelve (12).

Mr. Spanski: Nine (9), ten (10).

Ms. Nakamura: Right. Then the cash flow deficit was nineteen point two (19.2) million.

Mr. Spanski: Right.

Ms. Nakamura: The only reason why we were...that helped us was we had the fund balance to help us pay the bills.

Mr. Spanski: That is correct. This incorporates all of them. This is not just a General Fund, this is a lot of Funds that were involved in this.

Ms. Nakamura: Right.

Mr. Spanski: This is just...like say for example, Accounting sends over to me Accounts Payable, and the Accounts Payable for Thursday is three point nine million dollars (\$3.9). I know I have to have at least three point nine (3.9) available. If you look at the average at the first chart, we averaged on disbursements nineteen million dollars (\$19,000,000.00) a month. If you average it out, we brought it about seventeen (17), smoothing everything out.

Ms. Nakamura: Thank you.

Chair Furfaro: Mr. Kagawa, you have the floor.

Mr. Kagawa: Dave, just a couple of questions. Thank you for your presentation and your handout. If I look at the first page, under July the first month, I notice that the disbursements are double of the rest of the months. Is that because of a lot of spending in the last month of June?

Mr. Spanski: Well, what happens is the County passes Ordinances. You are transferring in your Budget Ordinance, you tax form money to the Public Access, to Sewer, to Solid Waste, and to Golf. For example, for Fiscal Year 2013, you are going to subsidize thirteen million dollars (\$13,000,000.00). That usually goes out. That change is usually done there. Then you have your dead service, that month in July. Sometimes, your O.P.E.B. will hit in that period for the O.P.E.B. costs. We were paid up front, but maybe pay it late June. That is why.

Mr. Kagawa: So you are saying the year end monthly accounting payments are done during that month?

Mr. Spanski: Right.

Mr. Kagawa: Okay.

Mr. Spanski: Your debt service, say for example, coming up in 2014, the County's portions are going to be nine point five million (9.5) for next Fiscal Year. The majority of that, the principal say for example in August, four point two million (4.2) is going to go out as principal plus another two point two

million (2.2) million in interest, so about six (6) million dollars is going to flow out this coming late July or first August.

Mr. Kagawa: Second question, Dave. How long have you been Treasurer for?

Mr. Spanski: Almost twenty-one (21) years.

Mr. Kagawa: Wow, great job. I remember when I was working for the Council that you were already there. I was there about twenty (20) years ago, not to brag about that, but the question I have is that when you presented just the first two (2) pages for me tells me what you are trying to tell us about our County cash flow. If I look at the total line we are at nineteen point two (19.2) million, under as far as the cash flow. Half way through this Fiscal, we are at nineteen point five (19.5) million; I guess deficit with cash flow. If you add those two (2) that is almost forty (40) million.

Mr. Spanski: Right, but you have to remember you are going to have a big spike coming up in February that will smooth us out. There are more funds, and I know you guys like to pick...normally someone will talk General Funds - Solid Waste. These are altogether. Some have Reserve, and that is what we are starting to use now.

Mr. Kagawa: In your twenty (20) years, have you seen this kind of deficit, since you have been preparing these reports for a while?

Mr. Spanski: In the last couple years, the way the economy is done and where we are at now, yes, we are starting to eat into our Reserve now. That is correct.

Mr. Kagawa: It is not even close to what was in the past, right? For the kind of deficits we are seeing?

Mr. Spanski: I would be estimating if you are asking the way we are currently burning, yes, if we do not change how the revenue stream is or do not cut back on expenses, yes, it is coming to a point.

Mr. Kagawa: Okay, thank you.

Chair Furfaro: Okay. Dave, thank you very much for coming over to us. There are a couple of gentlemen I wanted to get to on an agenda that was deferred. Are there anymore questions of Dave? If not, thank you again, very much. You have one more question, go ahead.

Mr. Rapozo: If you cannot answer this, it is perfectly fine because I know you are the Treasurer and not the Accountants. How much longer do we have...

Mr. Spanski: If nothing changes?

Mr. Rapozo: Yes.

Mr. Spanski: I am just saying that into Fiscal Year 2012...this is my...if you are asking me, I am going to answer it.

Mr. Rapozo: I appreciate that, really because sometimes we do not get that.

Mr. Spanski: Into Fiscal Year 2012, say for example the General Fund was a minus nine (-9) million. If you look at the Chart, last year versus this year, we are five (5) million dollars more in debt. If you continue that, that is five (5) more and just carry it out, you would assume that your Reserve is going to be eaten up to the point if it was nine (9) plus five (5), it is going to be fourteen (14). I think your Reserve level was nineteen (19) unassigned in the Comprehensive Annual Financial Report (C.A.F.R.)?

Mr. Rapozo: Fifteen (15), I think.

Mr. Spanski: Yes, but if you...

Mr. Rapozo: Nineteen (19), that is right.

Mr. Spanski: Then if you said minus four (-4), then you are at five (5).

Mr. Rapozo: We have a couple of years if we do not change?

Mr. Spanski: Yes.

Mr. Rapozo: I hope the public gets that and I hope the Administration gets that, because that is vital. It is a ticking time bomb and we need to make some drastic changes. I appreciate that coming from the Treasurer. You always answer our questions and I really appreciate that Dave. Thank you.

Mr. Spanski: Thank you to my detriment.

Chair Furfaro: Mr. Bynum.

Mr. Bynum: Dave, if you were doing the same report for the first part of 2000 to 2006, you would see the opposite, right? Revenues exceeding expenditures for a number of years in a row.

Mr. Spanski: Yes, because that...probably yes. I cannot answer without doing it. But yes...

Mr. Bynum: We know the Fund Balance grew during those years.

Mr. Spanski: That is correct.

Mr. Bynum: This is the impact of giving up thirty (30) million dollars of revenue to non-resident tax payers over the last four (4) years. We have thirty (30) million less...

Mr. Spanski: I do not have an opinion on that, Sir. I just report the facts.

Mr. Bynum: Thank you.

Chair Furfaro: That is exactly what we expect of the Treasurer. Thank you for your report. I do want to point out something. It is really important and I encourage everyone to try and set up an appointment with Dave. You cannot let an item as important as cash flow to be misunderstood one way or another. You need to understand there is a timely sequence of income. There is a timely sequence of paying the bills, and especially our debt service. I would just encourage, and I want to hear from you that people are welcomed to make an appointment.

Mr. Spanski: That is correct.

Chair Furfaro: Thank you, Sir. Have a good lunch.

Mr. Spanski: However, I am only one guy. I only have a coworker so there is not a lot of Staff.

Chair Furfaro: Maybe they ought to bring the lunch. Thank you, Dave.

The motion to receive C 2013-36 for the record was then put, and unanimously carried.

Chair Furfaro: May I ask I.T. and the Police Department to come up together, because it is a joint question, right?

C 2013-35 Communication (12/17/2012) from the Chief of Police, requesting Council approval to expend Asset Forfeiture Funds (Account No. 206-1001-551.30-00) to purchase a Power Document Management System (DMS) Suite computer software program for \$12,500.00 and a \$2,500.00 standard fee to provide each employee of the Kaua'i Police Department a user license for three (3) years. The Power DMS Suite is a recommended computer program by the Commission on Accreditation for Law Enforcement Agencies (C.A.L.E.A.): Mr. Rapozo moved to approve C 2013-35, seconded by Mr. Bynum.

Ms. Yukimura: Yes, it is.

Chair Furfaro: For those in the crowd, we are going to break for lunch and I will tell you what the schedule is when we come back for lunch. Councilmember Yukimura, the floor is yours.

Ms. Yukimura: Thank you for being here, both of you. I just had some questions in terms of the interface of the software that is being proposed to be purchased with all of the other interfaces...with all of the other software with other wider County software if there are interfaces with that. I just wondered if there has been discussion between the two (2) Departments or Divisions?

BRANDON RAINES, Information Technology Manager: For the record, Brandon Raines, I.T. Manager. We are talking about the Power Document Management System (D.M.S.) software for the Police Accreditation piece. Yes, I.T. and the Kaua'i Police Department (K.P.D.) have been in discussion about that particular piece of software. From my understanding from K.P.D. who is the content's experts is that that is recommended by National Commissions. Our discussions are such that we are supportive of the funding request to purchase the

software. It is pretty standard, so the next step is once we purchase the software, we can work with K.P.D. on integrating that into our existing infrastructure. It is fairly much a standalone piece of software that manages the accreditation process. We would be working with them primarily, just to integrate it into our technical infrastructure on the technical side of the implementation. In terms of the usage, that is within the K.P.D. accreditation program.

Ms. Yukimura: Okay. It talks about creating policies and procedures within a paperless workplace. It "distributes documents automatically to users or groups and tracks the Commission on Accreditation for Law Enforcement Agencies. (C.A.L.E.A.) standards with each policy and associated proof of compliance." I see that it is a specialized...dealing with specialized policies? Or is it...I am just wondering how we do our policies and procedures County wide and whether there is an interface there.

ANTHONY MORITA, Sergeant, Kaua'i Police Department: Good afternoon. My name is Anthony Morita, Police Sergeant for Kaua'i Police Department. Thank you for allowing me to be here to explain a little about the Power D.M.S. Basically what it is, is an electronic management software. Basically, we are still stuck in the old times where a lot of our documents and files are in paper form. What this will allow us to do is better manage our policies and the way we relate it to our employees. It is an electronic way to track and to show what policies or procedures are covered with the employees and within the software, it not only organizes it and categorizes it, but it also allows us to do the online testing with our employees to see if the policies that they reviewed are covered and that they understand what it is. It is a great tool. I will show a brief overview via E-conference, but it is invaluable and it will really help us to simplify and organize what we have going on now.

Ms. Yukimura: Is of the goals of accreditation is to ensure that all of the employees understand the mission and the policies of the Police Department?

Mr. Morita: Yes, definitely.

Ms. Yukimura: Okay.

Mr. Morita: It will be a better way to track that and keep it on an electronic file so that we can show what employee covered what policy, the date and time, and so forth.

Ms. Yukimura: The County does not have that kind of tracking system with its general policies?

Mr. Morita: No, we do but it is in file format, paper per say. Some of the policies that we covered in the Police Department. I am not sure of the whole County. As for the Police Department, it is just an easier way for us to...because we are required every year to review certain policies and procedures to show that it was covered and it was understood. With this software, it will be a better way to show and document that.

Ms. Yukimura: It sounds like something that we could possibly use in other County Departments.

Mr. Morita: Definitely, yes.

Ms. Yukimura: It was just mentioned to me recently that the County does not have a standardized process for establishing policies. Some of them are opinions, even verbal established which is a violation of Chapter 91, I think, the Administrative Procedures Act. A question for Brandon; there was one point in our history of computerization where there was a Committee that approved software purchases to make sure they were all okay and that is the function that your Division plays right now, or is there any sort of control over the acquisition of software County wide?

Mr. Raines: There is a partnership between I.T. and respective agents are making that request. Our job is to make sure that we have compatibilities and our systems are able to support that going forward. Counting on all of the individual agencies to kind of be the experts in their own areas in terms of what they need. I.T. is responsible for trying to layer that on the overall road map of where we are going and make sure that everything is going to work together going forward.

Ms. Yukimura: Before any purchase of software, it does go through your Office?

Mr. Raines: That is correct. Anything to do with software or hardware or things that may touch the computer, or the networks and things that come to our Office, we have what we call the S.C.R. or Supplemental Computer Request. It is a form that we route, unfortunately many on paper these days, but hopefully in the future, we can do that electronically. But it is a form that is filled out anytime there is one of these requests that come in. For the Power D.M.S. system, that would be no different. The only exception to that is when we have a larger initiative where there is a more enterprise level software system, it must have a standard request and more of a strategic project where we would meet as a Committee and go through our preprocesses and things like that. There would be much more of a formal process than just a simple S.C.R. form. I.T. would obviously still be involved.

Ms. Yukimura: When a request like this comes before us, we would assume that it has gone through this betting process or does it happen after?

Mr. Raines: You can assume that, unless we are violating the procedures and policies that we have in place. Every software and hardware purchase does come through the Office, which means there is an I.T. that is assigned to it as the Analyst, and then it runs by self where it gets approved for funding.

Ms. Yukimura: Thank you and I am glad to know that. Thank you very much, Sergeant.

Chair Furfaro: Okay, Vice Chair.

Ms. Nakamura: I just have one quick question. Is training included in this Budget or is that a separate...do you have funds for training to make sure that the software can be used?

Mr. Morita: Yes. It definitely would be something that would be split up and all the different bureaus and agencies would be covered in a mass

briefing and training, so to speak. Everyone would be familiar with it before it will be implemented.

Ms. Yukimura: Just a follow-up to Council Vice Chair's question. So this twelve thousand five hundred (12,500) and twenty-five hundred dollars (\$2,500.00), does that cover the training or is the training covered by training moneys in your Budget?

Mr. Morita: I believe that is separate. I think that just covers the software.

Ms. Yukimura: Okay, but the training is covered by other parts of your Budget?

Mr. Morita: Yes.

Ms. Yukimura: Okay, great. Thank you very much.

Chair Furfaro: Gentlemen, thank you very much. We are under the assumption that the non-productive time for Officers for training is in your payroll Budget? That is the assumption we are under here? Okay. No more questions for you, Gentlemen. On that note, thank you very much for coming over.

The motion to approve C 2013-35 was then put, and unanimously carried.

Chair Furfaro: Now, I am going to share with you about the particular item regarding the Enterprise Fund change. I do not want Sally to come back...I am looking to receive this item. I said earlier defer. I want to receive it so it comes back in two (2) weeks as a new item. May I have a motion to receive?

C 2013-41 Communication (12/11/2012) from the Accounting Systems Administrator, Department of Finance, transmitting for Council approval the Accounting Division's request to reclassify three (3) of the the County of Kauai's Funds: Housing Fund, Sewer Fund, and Golf Fund from Enterprise Funds to Special Revenues Funds. The reclassification would be reflected in the Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ending June 30, 2013: Mr. Kagawa moved to receive C 2013-41 for the record, seconded by Ms. Yukimura, and unanimously carried.

Chair Furfaro: Now, you do not even need to sit down. You need to come back with the proper posting for us in two (2) weeks.

Ms. Motta: Thank you.

Chair Furfaro: On that note, some housekeeping notes; we are going to come back at 1:20...I am sorry 1:40, and we are going to start with public hearings at 1:40. Also along that note, I do want to let you know that you should have gotten a distribution; and this is a personal privilege for me. On the Council's Departmental Budget Reviews scheduled that I put together and got approval. If you do not have it, I will get it to you right away. The County Attorney's Office gave their stamp of approval to my schedule and it was distributed. On that note, let us take a lunch break and I will see my colleagues at 1:40.

There being no objections, the meeting recessed at 12:40 p.m.



The meeting reconvened at 1:58 p.m., and proceeded as follows:

Chair Furfaro: Aloha and we are back from our break. The Chair turns the floor over to Mr. Bynum. Mr. Bynum, you have the floor for the next agenda item.

RESOLUTIONS:

Resolution No. 2013-11, RESOLUTION SUPPORTING  
REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT (VAWA)

Chair Furfaro: Mr. Bynum, you have the floor.

Mr. Bynum: Thank you, we are here to consider a Resolution regarding the "Violence Against Women's Act." I am going to give just a really brief overview in my mind of what V.A.W.A. is. Then we have some people here from the Police Department, the Young Women's Christian Association (Y.W.C.A.), and the Prosecutor's Office to talk about how V.A.W.A. impacts our community.

The Violence Against Women's Act was passed in the United States in 1994. It was then Senator, Joe Biden's Bill. It has been reauthorized routinely once in 2000, and again in 2005. Then, this year, and each time it has been renewed, the experience of working with Violence Against Women and the Country, there has been Amendments to the Bill to make sure that it meets the needs of all victims, regardless of their locality or any status they may have. The protections have expanded with each reauthorization. Last year in the Senate, a bipartisan Bill that was introduced by a Republican and Democratic Senator, passed the Senate, but in the House version, they stripped out all of the protections for protective classes and people who are high risk. That was unacceptable to most supporters of this Amendment over many years, and the House said they would take it up again. Unfortunately, the least productive House in the history of this Nation, refused to even take it up so the V.A.W.A., the Violence Against Women's Act, after eighteen (18) years, expired. It puts the funding that Kaua'i County has through the V.A.W.A. program at jeopardy. Over the eighteen (18) years, V.A.W.A. has helped trained hundreds of thousands of Police Officers, Prosecutors, Victim Advocates, and has put in various protections, which I will not go all through, to make sure that protective orders are powerful across State lines. Lots of provisions, eighteen (18) years worth of working collaboratively to better address the needs of Violence Against Women, that has now expired.

Patrick Leahy, the Senate Judiciary Committee in today's news says that that reauthorization of the V.A.W.A. will be the number one priority for him coming into the New Year. So this Resolution is intended to support the reauthorization of V.A.W.A. to educate our Congressional Delegation. Hopefully the Council will agree that we will have a unanimous support of saying that this should be reauthorized along the lines of the Senate Bill that keeps the protection for various classes. Having said all of that, I will read the Resolution and then ask for input from the community.

"Resolution supporting the reauthorization of the Violence Against Women's Act, known as V.A.W.A. Whereas, as in the rest of the nation, violence against women is a problem on the island of Kaua'i, with 420 instances of abuse of a family

or household member, 357 cases of domestic violence, and 32 forcible rapes reported in the year 2009 alone; and whereas, the Violence Against Women Act (VAWA) first passed in 1994 has been funding clinics, shelters, and hotlines for victims in crisis across the country, and provided tremendously important tools for law enforcement to crack down on abusers and rapists. Last year alone VAWA has trained 500,000 law enforcement officers and judicial officials, and provided a national crisis hotline that served 264,000 victims; and whereas, the Violence Against Women Act has been reauthorized unanimously by Congress in 2000 and 2005; and whereas, the Violence Against Women Act provides a comprehensive and effective set of protections and programs to educate and coordinate services between law enforcement officers, hospital staff, social service organizations, and members of the judicial system; and whereas, the Violence Against Women Act expired in 2011, leaving these critical protections and programs at risk of losing funding; and whereas, U.S. Senate Bill 1925 reauthorized the Violence Against Women Act in 2011 and expanded protections for populations underserved due to immigration status, age, location, ethnic or racial identity, gender identity, sexual orientation, and women residing on Native American tribal land; and whereas, according to a majority of the U.S. House of Representatives not all victims are "legitimate," and the House Judiciary Committee removed improved provisions of the Senate bill by excluding protections for Native Americans, LGBT (lesbian, gay, bisexual, and transgender community), and immigrant victims; and whereas, for the first time since 1994, the Violence Against Women Act has been allowed to expire because the U.S. House of Representatives failed to pass any bill, even a version that stripped protections; and"...I will read the Amended version in case I lost it..."Whereas, no one in Congress should be setting up laws that provide one standard of law enforcement for one group of victims, and a different standard for another group; and whereas, it is consistent with the values of Kaua'i to protect all persons from violence, regardless of immigration status, age, location, ethnic or racial identity, gender identity, sexual orientation, or status as a Native American; now, therefore, be it resolved by the Council of the County of Kaua'i, State of Hawai'i, that it urges the United States Congress to reauthorize the Violence Against Women Act in a manner that expands rather than limits protections for people who experience domestic violence, sexual assault, or stalking. Be it further resolved, that the Kaua'i County Council supports the provisions of U.S. Senate Bill 1925, which attempted to reauthorize the Violence Against Women Act and preserve protections for all people. Be it further resolved, that copies of this resolution be sent to" our Legislative team. Thank you. I would like to suspend the rules and ask the Prosecutor's Office to come up. What I am hoping is that you briefly as quickly as possible, explain what V.A.W.A. does for your...how V.A.W.A. funds have been used in the Prosecutor's Office and what might be the impact, should those funds expire.

There being no objections, the rules were suspended.

JUSTIN KOLLAR, Prosecuting Attorney: Thank you, Committee Chair Bynum, and members of the Committee. For the record, Justin Kollar, Prosecuting Attorney.

JAMIE CHONG, Grant Coordinator: Jamie Chong, Grant Coordinator for the Prosecutor's Office.

Mr. Kollar: Our Office does support this Resolution and does support efforts to reauthorize V.A.W.A. at a National level. In terms of what it accomplishes for our Office, the funds we received totaled less than fifty thousand dollars (\$50,000.00) a year, but typically somewhere in the forty-six (46) to forty-seven thousand dollars (\$47,000.00) per year area. We use those funds to support our Domestic Violence Prosecution Unit, typically misdemeanor, family-abuse type cases, and domestic violence cases; both in the Family Court and at the Circuit Court level. If those funds go away, it will have a real tangible impact on volume, quality, and quantity of domestic violence prosecution here on Kaua'i. I can answer any specific questions you have, but that is basically the bottom line.

Mr. Bynum: Thank you. Any questions for Mr. Kollar? If there are no questions, I appreciate you being here and sharing that information.

Mr. Kollar: Glad to be here, thank you.

Mr. Bynum: Thank you, Jamie.

Ms. Chong: Thank you.

Mr. Bynum: Mr. Asher, could you share with us about K.P.D. and V.A.W.A.?

ROY ASHER, Assistant Chief, Kaua'i Police Department: Good afternoon. I am Roy Asher, Assistant Chief for the Kaua'i Police Department. Currently, we have two (2) grants that we use. All of our grants are for our Sex Assault Nurse Exam's (S.A.N.E.) Program. We use part of their grants for Deoxyribonucleic Acid (D.N.A.) analysis, payment of exams of our sex assault victims, as well as the payment for the examiners to do the actual exam. Also, inclusive of that is we have a standby program to have our nurses available twenty-four seven (24-7), three hundred and sixty-five (365) days a year, so that anytime we have an assault, and we need a nurse, we can summon one of them. Our equipment, all in the same room, is also paid by V.A.W.A. funds.

Mr. Bynum: Roy, I think the same program we have for Sex Assault Nurse Examiners is a good example. You and I have talked about this before about how V.A.W.A. with its initial collaboration and training in our agency,

led to these kinds of programs because jurisdictions were talking and identifying problems. Would you agree with that?

Mr. Asher: Yes. I failed to say that V.A.W.A. funds also pay for training and recruitment of our nurses as well.

Mr. Bynum: Any questions for Mr. Asher? Councilmember Yukimura.

Ms. Yukimura: The statistics in the Resolution about the frequency of this issue are pretty compelling. Looks like about eight hundred (800) of instances of family abuse, domestic violence, or forcible rapes. That is quite a lot of time and attention that the Police Department has to provide. That is almost more than one a day.

Mr. Asher: Yes. Those are 2009 numbers, I believe.

Mr. Bynum: Yes.

Ms. Yukimura: That is a substantial amount of Police work that is required by this area. I can see that the financial support would be important.

Mr. Asher: Yes, most definitely.

Ms. Yukimura: Thank you.

Mr. Asher: The standby and even some of the payments of the exams fund these. If not, we would have to be seeking it from the County funds.

Ms. Yukimura: Or it would not happen.

Mr. Asher: Yes.

Ms. Yukimura: Okay, thank you.

Mr. Bynum: Any other questions for Mr. Asher?

Mr. Asher: Thank you.

Mr. Bynum: Thank you, Mr. Asher.

Chair Furfaro: Mr. Bynum, since it was your Resolution, I would like to coordinate the rest of the speakers yourself. Here is the sign up list.

Mr. Bynum: Thank you. We are also going to take public testimony. We have two (2) people registered. First Jason Mallonee, and as Jason is coming up, I would like to thank him for contacting me to dialogue about this issue and helping author this Resolution. Thank you very much.

JASON MALLONEE: Thank you, Council, for hearing this Resolution today. Thank you, Councilmember Bynum, for introducing this Resolution. I am a resident of Kaua'i. I am also a graduate student in the School of Social Work at the University of Southern California. This is an advocacy project I have been working on for the past few months. I really believe that every individual deserves protection from violence and deserves adequate programs to respond when those protections fail. I feel that it is very important for Congress to pass, inclusive our Legislation. I think one of the great things about the County Council is that you have the power to send a unified message from the island of Kaua'i that this is something that is important to us. I have met with Representative Gabbard about this Resolution and she agreed that it was a priority for this next Legislative Session. I think this will help bolster the message from our community. Aside from that, I just really thank you for taking the time to hear members from our community talk about the Violence Against Women's Act and what it has done for the problems on this island. Thank you.

Mr. Bynum: Thank you. Next speaker is Renaé Hamilton, followed by Joan Luzney. You can come up together if you would like.

RENAÉ HAMILTON, Y.W.C.A.: Aloha Council. Good afternoon, Council Chair and Councilmembers. I am Renaé Hamilton with the Y.W.C.A. With me is Joan Luzney. He is our Clinical Director. Again, I want to echo a big thank you for this Resolution, Councilmember Bynum and Jason for heading the efforts. The Y.W.C.A.'s Nationwide have been following this issue from the very beginning for many, many years. Sometimes, we look for good things in Government. Positive things that have an amazing impact and V.A.W.A. is an example of successful programs of a successful Bill that has saved lives. It has improved communities throughout our County. On Kaua'i, every single population that V.A.W.A. wants to serve to protect, including the added protections for Native Americans, Lesbian, Gay, Bisexual, and Transgender (L.G.B.T.), and immigrants; I can tell you that as the Y.W.C.A, we are the only providers for support. We have the only family violence shelter on the island. We have our twenty-four (24) hour crisis lines and crisis workers, and we have members of every population utilizing our services. It is imperative for us with funding, V.A.W.A. is very important. We have used V.A.W.A in the past to fund our crisis lines, the age population. When we think about this as adults, but actually V.A.W.A will do teenagers as well when they move into puberty. There are large segments of the population that we serve that V.A.W.A. covers. It would be a real detriment, not just individual services that we provide, but also the system work; all of us working together, the Prosecuting

Attorney, the Kaua'i Police Department, our crisis workers, and our nurse examiners. We all have pulled together and it makes a huge difference in terms of system response for victims of these crimes. Councilmember Yukimura highlighted the numbers. Those are the numbers of reported crimes. We know at the Y.W.C.A., we provide services to those who also do not report, so there is actually a higher number of incidents, both sexual assault, stalking, and domestic violence that Law Enforcement or the Prosecuting Attorney do not see. Those populations without funding and things that help us keep our doors open, and keep our crisis lines going; there is nowhere else to turn. I appreciate the opportunity for this Council to provide that leadership and to send that message. We fully support that.

JOAN LUZNEY, Clinical Director, Y.W.C.A.: I just want to add a comment. Thank you for letting us speak today. V.A.W.A. funds come to each State categorically, so some goes to Law Enforcement, some are for application by a service provider. Across the system, moneys come different ways through the V.A.W.A. Bills. It supports our coalitions, and I think a critical issue to me over these services directing the Staff is in the years that we do not personally, as a service provider, receive V.A.W.A. funds, I am very much a part of a team like with the K.P.D. because V.A.W.A. is funding Law Enforcement to coordinate and collaborate and to build a better system locally. That is a really critical aspect. There are two (2) strong sides to this and whether we actually get money that particularly I am getting the benefit of the money that goes to the rest of our system so that our services maintain a high quality. If I look at the years, we have been drawing down these funds to the County. I have seen year by year, an improvement of our services, the teamwork, and the response from all the folks that draw these moneys down. It is really critical for us. Thank you.

Mr. Bynum: Thank you. Any questions? If not, I just want to thank you for coming, and I want to do a disclosure. Joan was once my supervisor and colleague. It is really nice to see you here. We get to see Renaé periodically but Joan, you have not been here often. Thank you for the great work you do every day. I appreciate it.

Ms. Luzney: Thank you.

Ms. Hamilton: Thank you.

Chair Furfaro: I want to echo what Mr. Bynum said and also, I want to give thanks to Jason for his contribution here. I have a daughter who has a Master's in Social Work and works for Drug-Free Hawai'i. It is tough work and it is work that sometimes goes unrecognized, so Jason, thank you for stepping forward and working with the ladies as well on the help you gave Mr. Bynum. Thank you very much.

Mr. Bynum: Councilmember Yukimura.

Ms. Yukimura: Thank you for your presentation. I just want to acknowledge because Councilmember Bynum has told me about some of his history. I guess he was directly involved in some of the work early on; the system improvement, and Renaé, your discussion about building a system and how a system responds together. From what I understand, the system was really much more primitive if you will, in the beginnings and all of your work, the Police, Prosecuting Attorneys, and other who helped you have greatly improved the system over the years. I just want to acknowledge that. Those who are unfortunate to be victims have a system of support here that did not used to exist, and it is because of your good work.

Ms. Hamilton: Thank you. It has been proven, nationally, and that is one of the reasons I said is that V.A.W.A. is a very good example of Government stride and really making an impact because if victims have that support...and victims support obviously, but also Prosecuting Attorney and Police Departments all working together and understanding those inter-related issues, we have a much more successful rate of victims following through; all the way to successful prosecution. Without that, reporting does go down. The end result of that is our community is at more risk. We are safer when the systems work well together and victims are then encouraged and feel supportive as they go through a very long and difficult process. Thank you.

Ms. Yukimura: Thank you.

Mr. Bynum: Anyone else? If not, thank you very much. I just want to say in closing before we entertain an amendment is that hopefully people got a sense that V.A.W.A. works on several levels. One is that is has legal protections for victims. It really was the impetuous for this collaboration and working together for Law Enforcement, victim advocates, therapists, and a Legal System to say, "We all have different roles in this but how can we all be focused and meet each other's needs, but primarily the need of the victims involved." It was kind of staggering for those of us who have watched this for years to see this expire...the legal protections expire. However, the funding is likely to continue because it is a Budget item, but it puts it at risk that this is happening. I have seen personally the impact that it has made on Kaua'i in terms of all of us working together better. It also helps to make sure there is consistency from State to State. Thank you for taking the time to be here and support this. Is there anyone else in the audience who wants to testify on this matter?

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Okay. I would like to call the meeting back to order. We can have discussion amongst the members here. Mr. Bynum, it is your Resolution so I am going to continue to let you coordinate the meeting all the way to the vote of the item.

Ms. Yukimura moved to approve Resolution No. 2013-11, seconded by Ms. Nakamura.

Mr. Kagawa: I am going to fully support this Bill and I thank all of you for all of your work. I do not think we can talk about this kind of issue enough. There is a need for awareness and improvement is always there. I want to thank Mr. Bynum, especially for your work. Mahalo.

Ms. Yukimura moved to amend Resolution No. 2013-11 as circulated, as shown in the Floor Amendment which is attached hereto as Attachment 1, seconded by Mr. Rapozo.

Mr. Bynum: One of the sentences in this was pretty awkward, and that was pointed out to me by Councilmember Yukimura. We worked on making the intent of that sentence clear. Thank you.

The motion to amend Resolution No. 2013-11 was then put, and unanimously carried.

The motion to approve Resolution No. 2013-11 as amended to Draft 1, was then put, and carried by the following vote:

FOR APPROVAL: Bynum, Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST APPROVAL: None	TOTAL – 0,
EXCUSED & NOT VOTING: None	TOTAL – 0.

Chair Furfaro: Congratulations to Mr. Bynum and all of those who worked so hard on this project. We are going to take a ten (10) minute recess.

There being no objections, the meeting recessed at 3:00 p.m.

The meeting reconvened at 3:11 p.m., and proceeded as follows:

Chair Furfaro: Okay, we are back from our break. Jade, I would like to take the Civil Defense item.

C 2013-39 Communication (12/13/2012) from the Council Chair requesting the presence of the Civil Defense Manager to provide an update on the new tsunami



inundation modeling and appropriate tsunami evacuation signage for the County of Kauaʻi.

Chair Furfaro: Gentlemen, thank you for being here. We have a group coming here at 3:30 today so I would like to cover this item so that you can be excused. As we had discussion in my office about the acquisition of these tsunami signs, indicating the high water safe zones and so forth, so that we could be as compliant as possible, as soon as possible. I would like to hear from you along the same way this update will be very important for a request that was made by us with the Civil Air Patrol. They have the national guys here this Sunday, and I believe Mr. Rapozo will be representing us as we explain the tsunami coastal areas through the air flight and the safe areas. Could you in fact give us the status of the signage and then we will take questions and answers from there.

MARK MARSHALL, Kauaʻi Emergency Management Officer: I would be happy to do that. My name is Mark Marshall. I am the Kauaʻi Emergency Management Officer, K.E.M.O. - the acronym, and with me is our Plans and Operations Officer, Elton Ushio. He is going to help me with part of the presentation. I will make it as brief as I can.

Chair Furfaro: Is this the tag team of Kimo and Moke?

Mr. Marshall: His acronym is K.P.O.O., which he is not very (inaudible) with, so we will leave that one alone. I have to tell you that my Manager from the Mayor's Office is off to the Philippines for a month on vacation, so that is why he pinch hitting for him. I am going to do a real quick history. One of my pet peeves is death by PowerPoint, and by the way, congratulations on all of your campaigns and winning reelections, and the new people here.

Anyway, a hundred and fifty-nine (159) folks in the State lost their lives in 1946 in the origin of the Aleutian Islands in the earthquake and tsunami that resulted from that. This is actually a picture of Alaska where it threw a boat into an oil tank farm. The next one was the year I was born, 1952. No lives were lost, maybe more information than you needed, and a million dollars worth of damage from an eight point two (8.2), again in the Russian peninsula near Alaska. This is a picture showing the inundation from an airplane. In 1957, five (5) million dollars worth of damage in 1957 moneys, and had a twelve (12) foot destructive wave that actually hit the Hawaiian Islands from the Aleutian Islands. This is a picture of Hilo as the wave inundated the Keaukaha area, just South of Hilo Town. In 1960, this one had sixty-one (61) deaths and twenty-three (23) million dollars worth of damage. Most of the losses were actually in Hilo, but a few on some of the other islands. This one came clear across the Pacific Basin from Chile. This is a picture right after that tsunami of the Hilo Bay area. In 1975, there was the last destructive wave. It was a locally generated tsunami from Halapē, down below

Volcanoes National Park. My ex-brother in-law was in the Boy Scout Troop, and was one of these thirty-two (32) campers that were there that night, and actually got deposited into a crack that opened up or a ditch that opened up. It saved his life but it broke the Scout Master's neck when he fell into that ditch and he subsequently drowned from both this locally generated earthquake. The Halapē coastline dropped eight (8) feet in eight (8) seconds. It was like stairs stepping down and this was the last fatality in our State. The reason I mention the history on this is Punalu'u in the Kā'ū District of the Big Island. The reason I mentioned this is because they are fairly and frequent and as you see around from forty-seven (47) through fifty-seven (57), there was several in that decade. Then we go from 1960 all the way to seventy-five (75), there is a fifteen (15) year span without anything. One of the things that we are...and Elton will speak on this later is about the new inundation mapping that the University of Hawai'i is doing in a modeling study. They have actually completed all of the other Counties, and we are the last. Having telling us that, they said they will get the best product because they have done all of the other islands. We are very anxious. We actually have a review coming up in February for that. You can read this. These are just some basic do's and don't's. In the last tsunami warning that we activated in from Canada, we got kind of confused about sounding and "all clear." The Governor was insisted that we go to an advisory, and yet we have...and I took this from the National Weather Service's...the National Oceanic and Atmospheric Association (N.O.A.A.)'s site on tsunamis. There has actually have been telling our population for years that "all clear" means that it is safe for you to return back into those areas. Yet, we went into an advisory, so that is some clean-up work that we need to do here in the State. It is up to the Local jurisdictions to make that determination that it is "all clear" and that we can lift road blocks to go back into inundation areas.

We have a series of these Deep Ocean Assessment and Reporting buoys for tsunamis that are out there, and D.A.R.T. is the acronym. These are placed...used to be primarily by the United States but if you see this, we are actually involving India, Russia, Thailand, Ecuador, Chile, and Australia in this what is an attempt to do a worldwide D.A.R.T. buoy mapping. These are deep ocean buoys that can detect tsunami movements, even out in the deep ocean. Tsunamis are extremely hard to detect in the open ocean. They do not really reveal themselves. If you notice, there is one South of us, or actually the South East of us, that sort of services the Hawai'i Archipelago. You see the concentration of them along the Aleutian Islands up here to the North of us. This is a very slip area according to Scientists. This is a very problematic place for us to receive a disruptive wave.

This is a rather busy map or chart I should say, and it is corrected to travel times to Nāwiliwili Harbor in hours. If you look at the bands, you can see that for example coming from way South in South America, we have fifteen (15) hours, then you see fourteen (14), thirteen (13) as it progresses towards us. Our biggest fear of

course is a huge earthquake on the Big Island giving us less than forty (40) minutes of travel time before we are hit with destructive waves.

I have learned that frightening people into preparedness does not work. We need to tell them "what is in it for me" with them and they will more likely to prepare if there is some self value to them. I am not trying to scare you; I am just trying to give you a little background on what is going over. I will let Elton talk to...or new initiatives on the tsunami modeling that is about to be delivered.

ELTON USHIO, Plans and Operations Officer: Looking at those bullets up there, Doctor Kwok Fai Cheung of the University of Hawai'i was a lead Scientist in this modeling project, which was funded by State Civil Defense and the National Tsunami Hazard Mitigation Program. As Mark has indicated, they have completed all the other islands and Kaua'i is the last jurisdiction in Hawai'i. They informed us that the modeling is complete. The models will be updated from our older 1996 era maps. They use the State of the art modeling with variables being set by the most significant tsunami to impact Hawai'i historically. Adding another variable, if it were to have happened at high tide, to date, our agency has only seen a couple snapshots of the new modeling. Those are not for public release but based on what we saw, the current evacuation maps that we have been using will need a considerable modification in the near future. At such a time where we get the whole model, if you would like to see it in an executive session, we may be able to present at that time. Anyway, as with any scientific study, there has to be a peer review process. We have scheduled that for February 21<sup>st</sup> at Civil Defense, in our Emergency Operation Center. That will be taking place very soon. Sometimes there are some confusion, both in the Government and in the public versus the difference between tsunami inundation and tsunami evacuation maps. This study produces tsunami inundation figures at the extent to which the water will go in and what depths. Based on that, what we do is we convene a multi-disciplinary team; usually consisting of Emergency Management, Police, Fire, Public Works, etc. We try to develop logical evacuation areas that slightly exceed the projected inundation areas due to margin of error and also logical lines or evacuation, road blocks, traffic control points can be set-up. That process will follow. Following that, before formal adoption of the new maps, we will go to through a public hearing process.

Mr. Marshall: Thank you, Elton. Just to be clear, it is our responsibility to draw those evacuation lines, excepting the best science on where the water will actually inundate to. I have also been told by the Federal Emergency Management Administration that it will not affect their Flood Insurance Rate Maps (F.I.R.M.) will not be affected by that. Having said that, my Niumalu lot is touched by a tsunami inundation and my mortgage lender required me to have flood insurance for that. Whereas it is not required by F.I.R.M. maps because it is not rivers, flooding, or runoff; they do require me because the map shows that I am in an inundation zone. There could be some contentious things happening to owners

given the will of their mortgagees to either require them to have insurance. We may be putting people into evacuation zones that are not there right now under our current models. I think the last iteration of checking our maps was done in 1996 by George Curtis, a University of Hawai'i Professor.

The evacuation routes, we have gotten a grant from State Civil Defense to purchase the actual signs themselves. The poles that they will be erected on and some thermal plastic, and I will show you an example of the thermal plastic, which I pledgerized from the Big Island. I like taking best practices and putting them into practice to do that. This will initiate our evacuation routes from the ocean all the way to the mountain so we have clear evacuation routes for people. These are two (2) of the pivotal ones letting you know that you are entering a tsunami evacuation zone and in fact, you are leaving an evacuation zone. These are just simple directional evacuation route markers that would go up on extension poles along the road way. I have had dialogue with Ray McCormick, the Engineer in charge of Department of Transportation highways here. He is on board with us in this campaign. It will be a multi-Agency cooperation because we obviously cannot do things on State land. He really likes this and he wants to participate with this. These are the thermal plastic disks that Big Island has embossed and actually mount them into the roadway. They have a fifteen (15) to twenty (20) year life span. We try to get them towards the center of the roadway so there is not so much traffic over the symbol. This symbol would mean that once you cross the symbol, you are actually in a safer zone, and that you are out of the evacuation zone. Of the Police Departments fifteen (15) or sixteen (16) roadblocks that they establish, we also want to put extensions into the roadway so they can simply bring a pole on a sign that says the road is closed, and be able to close the roads in a quick fashion that way and these would be the markers as to where to find those extensions. It has a little cap to keep the gravel and the sand out. It is very similar to what you see on the contra flow if you look at the signage of the contra flow besides the coning that they have there. I am proud to say that a number of years ago, I applied for...or the County of Kaua'i applied for Tsunami Ready Community. We were granted that because of our several benchmarks that we met in terms of our warning systems and our Police and Fire dispatch and some other criteria that are there. One of the criteria that they like to see is route marking, although they still gave us this designation. It is a strong suggestion on their part that we complete a few more things on their checklist. We are also storm ready and I am proud to say that we are the first State where all the Counties are in compliance with the National Oceanic Atmosphere Administration's Tsunami Ready and Storm Ready Communities, so that is a feather on all of your folks caps.

Procedures, we need a Scientist to tell us that we have a problem so we use N.O.A.A.'s Pacific Tsunami Warning Center. Those notices will go out over our Emergency Alert System and those will be the crawlers on your television and be broadcasted on your radio. I am applying for a memorandum agreement with

Federal Emergency Management Agency (F.E.M.A.) to make us a part of IPauses which would allow us to push Emergency Alert System (E.A.S.) messaging to your Smart phones, and to other several devices like your tablets, computers, and things like that. It is a very simple memorandum agreement. They authenticate any messages. The only time that we would actually be doing Emergency Alert System broadcasting would be for an Amber Alert for an abducted child. The system also has a way to push videos and images, data packages, through these things. You would get the image of the little boy or girl that we are looking for on your Smart phone, and it is pushed voluntarily by all of the providers of cell phones in our County and currently all participating in IPauses. There is more to come on that.

The other notification system that we have is Black Board Connect C.T.Y., and we would push out to approximately twenty-five thousand and five hundred (25,500) subscribers to that system now, both in voicemail, E-mail, and text messaging, along with the Special Needs T.D.I. and T.D.Y. messaging with that as well. Then of course, our outdoor warning signs that we test the first work day of each month at 11:45. A little bit of a (inaudible) is that we do not open shelters before we have discretion from the tsunami. We do have refuge sites and those are mostly for tourists, but not exclusively. These refuge sites are just a place with minimal accommodations for them to be able to wait out until the "all clear" is given and they can return to their respective places. The other thing that I am trying to steal from Charleston, South Carolina is a Smart phone application that would orient you by Global Positioning System (G.P.S.) and tell you which way to run *mauka*, given that you might not be familiar with our island if you were a tourist, as I was in Charleston, South Carolina. The guy said, "If a tsunami was coming, Mark, which way would you run?" I picked the ocean by the way, so that shows you my orienteering in Charleston. It is something that would just reside on a server and could be called up and deleted off of your Smart phone when you are not there. The American Red Cross has some excellent applications in that same vein for hurricanes, first aid, and several other things. Maybe more than you wanted to know about tsunamis, but I would like to entertain any questions if you have any.

Chair Furfaro: Mark, thank you for the presentation. First of all, I would like to see if you could update your presentation to reflect Kaua'i in your presentation. If you need photos of the '57 and '46 tidal wave, I have some photos for you that reference Kahalahala, Hā'ena, and Kalihiwai.

Mr. Marshall: I would love to see them, Chair. Having lived in Hilo for twenty (20) years, I am a little enamored with them and have no photographs.

Chair Furfaro: I think it is very visual when you go to Hilo now because you see the "No Build Zones" and the signage. They have a tsunami

museum right in town. For our presentation to the public, maybe they can relate to the wash out of the road in Waikoko and so forth, and the bridges along there.

Mr. Marshall:                      Excellent suggestion. I actually looked and used my search engines to try to find and was unable to find much of anything for Kaua'i.

Chair Furfaro:                      I have four (4) or five (5) photos.

Mr. Marshall:                      Now I have a source so I appreciate that.

Chair Furfaro:                      Okay. Let me ask you, when do you anticipate we would actually put up the marking signs?

Mr. Marshall:                      The Peer Review by the scientist and my counterparts on the other three (3) Counties is going to be done February 21<sup>st</sup>. Past that, we are hoping to start initiating some time depending on Public Works because I cannot dictate their work load. Hopefully sometime in March is what...

Chair Furfaro:                      Okay, that was my next question. The installation is earmarked to go to Public Works?

Mr. Marshall:                      Correct. I have been in communication with both Larry Dill and Ed Renaud, who are really excited about our project and see the validity and the usefulness as a public safety tool. Whereas it is not going to be their top priority, it will get down. I also need to include outdoor circle and stuff for the sign pollution problems that are in there and be sensitive to some of those concerns. They have actually solicited input into this and I welcome that. Any other group out there that is concerned with that, I am not a great fan of signs, and I am really proud of our billboard ban in the State because of sign pollution, but I see this as a necessity. I am going to have a little bit of arm wrestling trying to do something on the Hanalei Monument Bridge that goes into Hanalei.

Chair Furfaro:                      Would the outdoor circle of participation also include comments that they might give us on this Civil Defense stenciling of the roads?

Mr. Marshall:                      We certainly could. I have not thought about that. There are very strict guidelines from the Federal State Highway folks on what you do with roadways, including the size of fonts and those types of things. Yes, we will certainly ask about that.

Chair Furfaro:                      You will get feedback on that. Okay. Members, are there any questions for Civil Defense?

Mr. Rapozo: I just have one question. I do not know if you could back one slide, but I just wanted to ask the question about the...as far as the warning, you talked about...the warning issue about the Pacific Tsunami Warning Center. You mentioned the notice to evacuate delivered by radio and television, but what are not up there are our sirens.

Mr. Marshall: I had mentioned that. It is not in the slide, is that what you mean?

Mr. Rapozo: Yes, and I guess I did not hear it.

Mr. Marshall: I had spoken to Black Board Connect C.T.Y. and then I mentioned.

Mr. Rapozo: Okay. I do not know if it triggered the sirens at the last tsunami alert, but what is the percentage of working sirens now?

Mr. Marshall: We actually did really well in the last test after a lot of attention being paid about the last tsunami warning. We were down to two...

Mr. Rapozo: At the tsunami alert. When they give the tsunami warning?

Mr. Marshall: The one after the tsunami.

Mr. Rapozo: What about the one before the tsunami?

Mr. Marshall: On the tsunami one...

Mr. Rapozo: Because that is the one that matters.

Mr. Marshall: Of course it does. Yes, we had three (3) outright failures but because we sounded them every hour, and we started three (3) or four (4) hours ahead of time, we had some power losses. They were all battery backed. Towards the end, we were not able to sound as long as we wanted to. We cannot sound more than three (3) minutes. We had cut that to one minute to try and conserve the battery back-up.

Mr. Rapozo: Maybe we can...I know we have had that on the agenda before but I do...because I know Statewide, we did have some issues.

Mr. Marshall: I have got to tell you that my "Administrator" on the Big Island resigned over that last tsunami warning. His Mayor was very upset with what happened. He ordered that all of the State sirens be fixed immediately if

they had to continue working right through the weekends and holidays. They accomplished that.

Mr. Rapozo: I think this Council has sent that message several times too, and look at whether we have to outsource, privatize, or whatever we have to do to get those sirens working because those things...the fancy things on the road or the signs in the (inaudible) is going to be meaningless if the people do not know if the warning is happening.

Mr. Marshall: Right.

Mr. Rapozo: I know you are talking about one, two (2), three (3), hour, but a Big Island tsunami will be forty (40) minutes, so we have got one shot.

Mr. Marshall: Correct.

Mr. Rapozo: One shot.

Mr. Marshall: I am looking at a tiered approach. My least effective is the outdoor warning sirens because if you hear a siren, it means one thing; turn on your media. Turn on your television and your radio and figure out why it is that we sounded a siren. That is my first wave. My next wave is Blackboard Connect C.T.Y. in that those folks, who have subscribed to it, is going to get it messaging that way. With this IPause, whether or not, you are going to get a regional messaging. What has happened in the industry is that now, because of G.P.S. and Smart phones, they can isolate that area to a County jurisdiction. I will not get warnings that there is a flash flood warning on the Hāmākua Coast on the island of Hawai'i. It has made it more feasible. One of our problems is over warning of course. It makes it more feasible if we can geo locate the people and give them pertinent messaging. These messages would be for free and involuntarily sent to the owners of the Smart phones.

Mr. Rapozo: Thank you.

Chair Furfaro: Mark, you know this Council is serious about this. If not, this would not have appeared on the agenda as a communication from the Chair. The next steps, I want to make sure is led by Mr. Rapozo and the Public Safety Committee.

Mr. Marshall: Understood.

Chair Furfaro: I want you keep him very well-informed because now when this information is out there, I do not want us to be in a situation where we are over promising and under delivering. That is very important. Please keep



Mr. Rapozo well-informed, and so he can get those Public Safety items into his Committee.

Mr. Marshall: I certainly applaud that effort and it is our life's work, so we take it very seriously as well.

Chair Furfaro: Do we need to put some more urgency...and one of the things I caught it, that Public Works was going to install it based on availability of time. Do you need anything from us that indicates...

Mr. Marshall: I think you asking that question is probably enough, but if I do, I will certainly solicit some more push on the item.

Chair Furfaro: Thank you. Councilwoman Yukimura.

Ms. Yukimura: Mark and Elton, thank you very much for being here. The Smart phone pause or interruption...

Mr. Marshall: IPause.

Ms. Yukimura: It is called an IPause?

Mr. Marshall: Yes. It is a Federal program.

Ms. Yukimura: To notify people of natural disaster, but can be isolated to the specific community that you want to reach?

Mr. Marshall: That is what they are saying. In my application, I have to validate my authority and my jurisdiction. Fairly easy for us is going to be the County of Kaua'i in the five hundred fifty (550) square miles of Kaua'i. You can imagine if you have neighboring Counties on three (3) or four (4) sides of you. This is a little bit more contentious because is not an exacting science in terms of trying to locate people especially if they are traveling within...

Ms. Yukimura: Okay. You have made application for this process to be...

Mr. Marshall: I am in a process of doing a memorandum of agreement with the Federal Emergency Management and Registration field.

Ms. Yukimura: Upon contracting or making or signing this agreement, then we will have the capacity to do that kind of notification?

Mr. Marshall: That is correct.

Ms. Yukimura: We already have the phone notification for those who are willing. The iPhone one will be an involuntary interruption?

Mr. Marshall: That is my understanding.

Ms. Yukimura: Okay. I am very grateful that you are using this and moving quickly to the social media and harnessing social media to do Civil Emergency notification because—and this does not diminish my concern to have the siren work, but to have another way of notifying people is very important. That way will be more selective because it will tend to be the younger, more I.T. savvy generations.

Mr. Marshall: That is correct.

Ms. Yukimura: We will have need for other ways, but the sooner the better. When do you estimate we can have this service?

Mr. Marshall: I do not know what groups F.E.M.A. is going to require me to jump through in terms of the validations. I do not really have a timeline and have not applied yet, so nothing will happen until the Mayor is willing to enter into the memorandum of agreement.

Ms. Yukimura: Hopefully you can get this done by the end of this year.

Mr. Marshall: I would hope so, yes.

Ms. Yukimura: Okay. I am really happy to hear about that and I hope that we can implement that as soon as possible.

Mr. Marshall: Very good, thank you.

Ms. Yukimura: Thank you.

Chair Furfaro: Mr. Hooser, you have the floor.

Mr. Hooser: Correct me if I am wrong, but this process will end up with a new set of tsunami inundation maps?

Mr. Marshall: That is correct.

Mr. Hooser: That will impact insurance rates, and interface with the Federal Government, those kinds of..property values for that matter?

Mr. Marshall: For a personal reason, I asked the question, "Will it affect the F.I.R.M. maps?" They told me, "No, it would not." The events of the tsunamis are so rare, that they do not come up in the scheme of what they are trying to do with the insurance rate maps, the Federal ones. As you know, those are subsidized by the Federal Government. They are non-competitive and the same price, no matter where you buy your flood insurance from. Normally, in my personal case, my lender required me to have it because I was in an inundation zone. The contentious part of this is we may be putting people because of the two (2) dimensional model. What we have now is one dimensional in the telephone books. With the two (2) dimensional modeling, we may have a greater inundation area. That has proven itself on Hawai'i County, Maui County, and the City and County of Honolulu. We are just letting you know that there might be some ruffled feathers when this gets rolled up.

Mr. Hooser: It seems like there could be two (2) sets. It could be confusing. There might be one set of Federal maps and then these other two (2) lines saying...

Mr. Marshall: These may come onto the FIRM maps. That is what they are telling me.

Mr. Hooser: That is what I am saying. Those maps are there. Those show a line. A homeowner will look at that line and then the inundation area on that and they will look at these maps and may be having a different...

Mr. Marshall: Yes, that is a true observation and is something that we are worried about as well. What we have said in houses is that if I can combine my hurricane surge, my tsunami inundation, and my river flooding into one zone of evacuation, then we will post it as that and we will take the most conservative of those and use that as our boundaries so it is not to confuse people. It gets very problematic when you start talking about hurricane surge, rivering, and tsunamis because different animals react in different ways to the landscape.

Mr. Hooser: Okay. Thank you.

Chair Furfaro: Again, just on the following piece, you should also research that there was loss of life on Kaua'i in 1957. There was loss of life in 1946 as well. Again, I would like your presentation to be of our island home. I would be glad to share some photos with you. You and the Department are to be commended for moving forward on this.

Mr. Marshall: I appreciate your critique, and I think one of the problems in '46 was that it struck on April Fool's Day.

Chair Furfaro: Yes.

Mr. Marshall: I was not around then, but I understand that to be true.

Chair Furfaro: Well, in talking with old timers on the North Shore, it caught a lot of people off guard.

Mr. Marshall: Do you recall the number of deaths, Chair?

Chair Furfaro: I think it was around six (6) or something of that nature. I have some of that at home because Grandpa was the North Shore Head of Civil Defense then.

Mr. Marshall: I have got a marvelous letter from Nadine Nakamura's father in law who was in Hilo and wrote to his wife describing the devastation and some of the activities going on there. It was quite a compelling eight (8) page letter and handwritten, as if anybody does that anymore. It was quite intriguing, but again that research goes back to Hilo, not to Kaua'i so I apologize for not having Kaua'i included.

Chair Furfaro: It is our island home and on that note, we are very clear. We are going to move to receive this update here, but I am going to encourage any further communications to be focused on Mr. Rapozo's Public Safety Committee.

Mr. Marshall: I appreciate that support, Sir. Thank you very much for the time.

Chair Furfaro: Thank you. Is there any public testimony on this item? Come up, Glenn.

GLENN MICKENS: For the record, Glenn Mickens. Thank you, Jay. Just one added thing. Mark made a fine presentation. I really appreciate it. They did not mention all the means of getting around the road in case of any emergency. I think we desperately need alternate roads to move around this island, whether it is a hurricane, tsunami, or whatever it happens to be. What are we going to do? You cut off the ribbon around this island and you are dead. You know as well as I do, Jay. After Ka Loko Dam broke, that thing was cut. Once that was cut, you could not go North or South. Those poor people out there had to take helicopters to get their planes out of this place which is three (3) or four hundred (400) dollars I think. I think Mark would agree with that word, that we do obviously need more alternate roads. The cane haul roads are probably the most easiest because I

believe, as you all know, they had to roads to keep their trucks off of our highways. That is what they were there for. Let us use them. Thank you, Jay.

Chair Furfaro: Thank you for your feedback.

Mr. Rapozo moved to receive C 2013-39 for the record, seconded by Ms. Yukimura, and unanimously carried.

There being no objections, the meeting recessed at 3:45 p.m.

The Council reconvened at 4:12 p.m., and proceeded as follows:

There being no objections, the rules were suspended.

JENNIFER WINN, Deputy County Attorney: We request to go into Executive Session on the ES-590.

EXECUTIVE SESSION:

ES-590 Pursuant to Haw.Rev.Stat. §§92-4 and 92-5(a)(4), (6) and (8), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to provide the Council with a briefing on Kathleen M. Ah Quin v. County of Kaua'i, Department of Transportation, et al., Civil No. 08-00507 JMS BMK, U.S. District Court, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: I would like to remind you folks that we had intended a call between 4:00 and 4:30. I would like to go directly into session if approved based on the fact that we may lose a few members to other appointments.

Ms. Nakamura moved to convene in Executive Session for ES-590, seconded by Ms. Yukimura, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Hooser, Kagawa, Nakamura	
	Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

There being no objections, the Council recessed at 4:15 p.m.

The Council reconvened at 4:35 p.m., and proceeded as follows:

Chair Furfaro: We are back from our Executive Session. May I ask the Clerk to please read the item that we are going to take action on?

C 2013-42 Communication (01/08/2013) from the County Attorney requesting authorization to expend additional funds of up to \$15,000.00 to enable Special Counsel's continued representation in Kathleen M. Ah Quin vs. County of Kaua'i, Department of Transportation, et al., Civil No. CV08-00507 JMS BMK, U.S. District Court, and related matters: Ms. Yukimura moved to approve C 2013-42, seconded by Mr. Bynum, and carried by the following vote:

FOR APPROVAL:	Bynum, Hooser, Kagawa, Nakamura	
	Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

There being no objections, the Council recessed at 4:36 p.m.

The Council reconvened at 4:42 p.m., and proceeded as follows:

BILLS FOR SECOND READING:

Bill No. 2458, Draft 1 – A BILL FOR AN ORDINANCE AMENDING SECTION 19-1.4 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PARKS AND RECREATION (General Prohibitions Applicable To All Parks And Recreation Facilities): Mr. Rapozo moved to receive Bill No. 2458, Draft 1 for the record, seconded by Ms. Nakamura.

Chair Furfaro: On that note, Councilmembers, did you have questions for the Police Department?

Mr. Rapozo: Chief, are you okay with waiting for a new Bill to come out that will address the concerns of the Police Department and some Councilmembers? Basically, to remove the exemption of campers, is that something that the Police Department can live with?

There being no objections, the rules were suspended.

ALEJANDRE QUIBILAN, Assistant Chief: As a short answer, yes, we can wait.

Mr. Rapozo: That is a great answer, thank you.

Chair Furfaro: Any further questions? If not, you can step away. Are there anymore public testimony on this Bill?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: Just for everybody who might be watching in the public, this is a Bill who got inadvertently through some errors sunset'd. It is a Bill that outlaws drinking in Kaua'i County Parks between 11 p.m. and 6 a.m. It is intended as a tool for when people are in the parks doing humbug and drinking that the Police have a tool to try to deal with rowdy behavior. I first testified on this Bill in 2001 and the good news is that once we fixed the problem receiving the Bill today, it is not going to have a sunset date and we will not have to visit this issue again because we have done it several times. The point is to receive this Bill to make a couple corrections and resubmit a Bill as soon as possible.

Mr. Kagawa: We had this in Committee, we had some great discussion but I still am not sure as to what is the best way to approach this problem. Just thinking that we may allow campers to drink and we are going to say that people who are fishing, cannot... it is going to be a tough one. It will be hard to enforce, we have two (2) different standards. I am not comfortable supporting no drinking in the Parks. I believe it is our resident's way of life but these are the tough issues, this is why we were elected and I am happy that we will come up with a new Bill that serves the right purpose and we can do it the right way. I want to make sure that we have something that we can stand behind as being in the best interest of the people.

Ms. Nakamura: Just to update the Councilmembers that Councilmember Bynum and I did meet with the Police Chief and Assistant Chief and we went over the different options and the Bill that we will be introducing will be a no exception option. I think everybody at the table agreed that that was the best way to proceed and the easiest way to enforce the intent of this Bill. That is how we will proceed and we want to try to fast track it as much as possible, so we will be introducing the Bill on January 30 for first reading.

Chair Furfaro: Any further discussion?

The motion to receive Bill No. 2458, Draft 1, for the record was then put, and carried by the following vote:

FOR RECEIPT:	Chang, Kagawa, Nakamura, Rapozo, Furfaro	TOTAL – 5,
AGAINST RECEIPT:	None	TOTAL – 0,

EXCUSED & NOT VOTING: Hooser, Yukimura

TOTAL – 2.

Chair Furfaro: Based on that item, Ale, we are going to go back to page four (4) because we need testimony from you again.

C 2013-40 Communication (12/06/2012) from the Assistant Chief of Police, Investigative Services Bureau, requesting Council approval to accept a donation of four thousand dollars (\$4,000.00), a portion of which, along with previous Grant moneys, will off-set the cost of hosting the upcoming Statewide Annual Inter-County Criminal Intelligence Unit (ICCIU) Conference in April 2013: Ms. Nakamura moved to approve C 2013-40, seconded by Mr. Rapozo.

There being no objections, the rules were suspended.

Mr. Quibilan: I am sitting here in for Assistant Chief Roy Asher, he is the Commander for the Investigative Services Bureau. We had short briefings as far as Kaua'i hosting this year's ICCIU conference. It is an annual conference that is hosted by the different agencies around the State. Basically it is a time of sharing of intelligence, cases that have been processed (inaudible) and pretty much sharing of how certain investigation had developed and the outcomes of those investigations from the various agencies. Also, looking ahead as far as what are the issues that the State Law Enforcement is looking at.

Chair Furfaro: Questions for Deputy Chief?

Mr. Kagawa: I do not know how we can help to support you but is that going to even be enough money for you to host that event?

Mr. Quibilan: I know that Assistant Chief Asher, his concern was about the cost for hosting this event. Again, I am just sitting in for him to cover, he is not available. I cannot answer your question right now if that would be sufficient funding.

Chair Furfaro: Any other questions? If not, thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2013-40 was then put, and carried by a 5:0 vote (*Mr. Hooser and Ms. Yukimura was noted Excused.*).

C 2013-45 Communication (01/08/2013) from the Deputy County Attorney, recommending Council approval of the following relating to Brennecke's Beach Broiler and Po'ipū Beach Park Restrooms Sewer Connection:



- Conveyance of Wastewater Facilities; concerning real property identified as TMK (4) 2-8-017:001 (por.) and Ho'one Road.
- Cancellation and Surrender of Easement 9 and Grant of Easements for Wastewater Facilities; concerning TMK (4) 2-8-017:023 (por.) and TMK (4) 2-8-017:015 (por.)
- Grant of Easements for Wastewater Facilities; concerning TMK (4) 2-8-017:011 (por.) and TMK (4) 2-8-017:023 (por.).

Mr. Bynum moved to approve C 2013-45, seconded by Mr. Rapozo, and carried by a 5:0 vote (*Mr. Hooser and Ms. Yukimura was Excused*).

C 2013-46 Communication (12/26/2012) from the County Engineer, requesting Council approval of the indemnification Provisions Contained in the Kaua'i Island Utility Company (KIUC) Interconnection Agreement, Schedule "NEM Pilot" for County Renewable Energy Projects: Mr. Bynum moved to approve C 2013-46, seconded by Mr. Rapozo.

Chair Furfaro:

Any discussion on this item?

Mr. Rapozo: I do not know if anyone is available, again, this is a Legal Document and maybe Al can explain, I am not sure. What does this actually do for us and for the County? Is it a... it is not a purchase power agreement. I am not sure what the "NEM" Energy Pilot does. I am not sure if somebody from Public Works is here. I am not sure if the County Attorney reviewed this. I am not sure if this is a Pilot Program, so I think it would be interesting to have the Department come over and explain to us what we are trying to do.

Chair Furfaro: It seems like I am getting to be a repetitious on this Al, but I would like a message to go back to the Administration that items of this nature... they are not set up to be... if they are not going to prepare someone to answer the queries for us then we will just defer it again. Unless, you want to make some commentary for the Public Works Department and so forth?

ALFRED B. CASTILLO, JR., County Attorney: I would be out of place to make any representation on their behalf; however... we can go offline but I understand the situation. Thank you.

Chair Furfaro: So do you think it would be wise for us to defer this and hopefully get more information in our packet?

Upon motion duly made by Mr. Bynum, seconded by Mr. Rapozo, and carried by a 5:0 vote, C 2013-46 was deferred (*Mr. Hooser and Ms. Yukimura was Excused*).

Mr. Rapozo: Mr. Chair, I do not have discussion but I do have a request.

Chair Furfaro:

Yes.

Mr. Rapozo: I am not sure if the County Attorney's Office had a chance to review the agreement, it does not sound like they did, but I would ask that Public Works sent over... this is a KIUC contract, not a County contract. I would assume that the best practice would be to have our County Attorney's Office review the language that is all I am asking.

Chair Furfaro: Al, may I ask you to come up again for a moment? My question is do you know specifically between the Public Works, which attorney will be dealing with this for them?

Mr. Castillo: I got to go find out and see who is on this case.

Chair Furfaro: Could you let my Office know.

Mr. Castillo: I will let your Office know.

Chair Furfaro: I want to send them both a personal note about... if this is an urgent agreement for them, they need to give it more attention.

Mr. Castillo: Yes, and Council Chair if I may, I know you move around on the agenda and I do not know... maybe we should have a better coordination.

Chair Furfaro: Al, I just got to tell you, I have reached out to them before. We now give them a post agenda for any request we get, this puts more burden on us. The fact of the matter is a little courtesy if they are not going to have somebody hanging around in the Office because it is now five (5) minutes to five (5), that is actually twenty-five (25) minutes over their *pau hana* time.

Mr. Castillo: I will look into the reasons why no one was here.

Chair Furfaro: Okay, thank you.

#### COMMITTEE REPORTS:

##### PUBLIC WORKS / PARKS & RECREATION COMMITTEE:

A report (No. CR-PWPR 2013-02) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be received for the record:

"PWPR 2013-02 Communication (11/29/2012) from the Council Chair, requesting the presence of the Director of Parks & Recreation, and Mr. Danny Way, Professional Skateboarder, to provide an update on all skate parks on Kaua'i,"

Mr. Bynum moved for approval of the report, seconded by Mr. Rapozo, and carried by a 5:0 vote (*Mr. Hooser and Ms. Yukimura was noted Excused*).

A report (No. CR-PWPR 2013-03) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be received for the record:

“Bill No. 2458      A BILL FOR AN ORDINANCE AMENDING  
SECTION 19-1.4 OF THE KAUAI COUNTY CODE 1987, AS AMENDED,  
RELATING TO PARKS AND RECREATION (General Prohibitions  
Applicable To All Parks And Recreation Facilities),”

Mr. Bynum moved for approval of the report, seconded by Mr. Rapozo, and carried by a 5:0 vote (*Mr. Hooser and Ms. Yukimura was noted Excused*).

## RESOLUTIONS:

Resolution No. 2012-55, RESOLUTION ESTABLISHING NO PARKING AT ANY TIME ALONG PORTIONS OF PO'IPŪ ROAD IN THE KŌLOA DISTRICT

Mr. Rapozo moved to receive Resolution No. 2012-55 for the record, and failed for a lack of seconded.

Chair Furfaro: This is the area fronting the surfing area.  
Am I correct?

Mr. Rapozo: This is the area in front of Po'ipū Kai, I believe. The entire stretch of Po'ipū Road, as you approach the Hyatt. We have discussion that we had requested... Mr. Chair, if I may because I did get a call from the Police Department.

Chair Furfaro: You have the floor.

Mr. Rapozo: I did get a call yesterday from Officer Takamura who was assigned and requested that he had done the analysis. He met with Public Works and they had determined and maybe we have not received anything, Jade? Did we receive anything from Public Works that they were going to withdraw their request for the Resolution?

Chair Furfaro: I have not seen it.

Mr. Rapozo: I apologize for making the motion to receive because I believe it was... in fact it was on Tuesday that Lieutenant Takamura called me on the phone and told me that they were going to withdraw the request.

Chair Furfaro: I have a question for our staff then. Yvette, is this piece going to be part of the Workshop? Yes? Okay. So, I want to make sure

that the Police Department is aware that there is a Workshop for the 31<sup>st</sup> of January that this item will be covered as well. Does anybody know if that is our understanding this will be part of that discussion?

Ms. Fountain-Tanigawa: Yes.

Chair Furfaro: It will be, okay. The motion is to receive, would anyone reconsider a second to receive?

Mr. Rapozo moved to receive Resolution No. 2012-55, seconded by Ms. Nakamura.

Ms. Nakamura: I just like to ask Councilmember Rapozo what is the basis for... or reason for withdrawing at this point?

Mr. Rapozo: They are going to take a better look at these intersections. Basically, the Department is going to recommend, as well as Public Works that these areas of no-parking will be specifically for safety issues. Every single intersection has a different parameter for a no-parking area and that was the basis and I believe Ashley was with me when the call came in from Lieutenant Takamura. What I should have done was ask Larry Dill to verify that information and I did not do that. But that was it...it is a case by case basis and what they did not want to see was entire stretch of the roadway be no-parking, if it is not necessary. I believe that it was Mr. Tabata that was in that meeting with Lieutenant Takamura but I can make a phone call.

Chair Furfaro: Let me follow up on this one because this is almost the story of Cool Hand Luke. What we have here is a failure to communicate. There is a scheduled Workshop of which I already assumed that the Police Department was aware of. The Workshop is tentatively scheduled for January 31 and it is in the Transportation Committee of which Councilmember Yukimura was making the arrangements with the Stakeholders in the Po'ipū area. Let us make sure we follow up with a communication to Public Works and Police Department tomorrow and I will take this as a move to receive.

Mr. Rapozo: I will suggest that we defer just in case the communication was an error to me that it was Public Works... this...

Mr. Kagawa: I am not sure if all the members got to look at their E-mail this morning but we got a letter from Kiahuna Plantation Manager with pictures showing the cars all parked and he is... briefly he says in his letter that it is dangerous for drivers to pull out of there because of the block lines of sight. I think what is happening is that it looks like trucks with surfboards there, looks like these surfers are probably parking there because maybe it is a good line to walk

towards their surfing area or hotels preventing them in the lots. We have a parking issue. Our local surfers need a place to park their vehicles to get to that surf spot, however we have concerns from Kiahuna saying that their visitors may be in danger pulling out to that road. I have driven that road many times, I have never found it to be a hazard to go slow and roll out and make sure you can see and pull out however, I think maybe we need to take a closer look if danger really is presenting itself. Then again, I want to make sure that we are sympathetic to our locals who just want to enjoy the beach and enjoy a healthy activity and surf and be able not have to walk too long with these heavy boards.

Chair Furfaro: I do want to say that I am thinking more and more of Mr. Rapozo's comment about the deferral because Kiahuna is a member of the Po'ipū Beach Resort Association. Po'ipū Beach is one (1) of the sponsors tentatively for this upcoming workshop. We have individual resident managers and business entities sending kind of a mix message on what we are doing here so perhaps a deferral will allow us two (2) weeks to get some clarity here. I would ask that Yvette put some urgency on that... if we go with the deferral. Thank you for your comments.

Upon motion duly made by Mr. Rapozo, seconded by Ms. Nakamura, and carried by a 5:0 vote, Resolution No. 2012-55 was deferred (*Mr. Hooser and Ms. Yukimura was Excused*).

Chair Furfaro: On another note, I would like to go back to the item that we queried for some dialogue with the Administration earlier and that is dealing with the fact that I would like to try to get... Ed Tschupp is here and I would like to get a motion to reconsider the action we took earlier.

Mr. Kagawa moved to reconsider deferring C 2013-46, seconded by Mr. Rapozo.

There being no objections, the rules were suspended.

Mr. Castillo: Before Ed Tschupp comes up, on the prior matter, the Engineer was waiting to be called and Lyle Tabata was...

Chair Furfaro: Now I am running a valet service?

Mr. Castillo: No, no...

Chair Furfaro: I am serious, Al. I cannot be calling everybody because he is in his Office. He has a t.v. closed circuit.

Mr. Castillo: They were told to be on standby that is his understanding. I will give him a call... well, it has already been deferred.

Chair Furfaro: On the road one (1), yes, that has been deferred.

Mr. Castillo: Okay.

Chair Furfaro: But I have to make sure people understand, we installed closed circuit t.v.'s so these guys can watch the business of the Council as we progress. Now I am being asked to be valet or the bellman... am I now parking the cars too?

Mr. Castillo: Well, I just a call from Lyle Tabata.

Chair Furfaro: I appreciate that. We have got comfortable chairs here we have coffee in the back...

Mr. Castillo: I will just inform him that it has been deferred.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to reconsider deferring C 2013-46 was then put, and carried by a 5:0 vote (*Mr. Hooser and Ms. Yukimura was Excused*).

Chair Furfaro: Can we read this item so we all know where we are at?

C 2013-46 Communication (12/26/2012) from the County Engineer, requesting Council approval of the indemnification Provisions Contained in the Kaua'i Island Utility Company (KIUC) Interconnection Agreement, Schedule "NEM Pilot" for County Renewable Energy Projects.

Chair Furfaro: Ed, thank you for being here and coming over. We have deferred that and now we are reconsidering it. Can you give us more background? We were not quite in concert with the County Attorney on what this piece meant.

There being no objections, the rules were suspended.

EDWARD TSCHUPP: My apologies for not being here when this item was called. I actually was monitoring most of the day in my office, on the

closed circuit t.v. but I was out at a meeting between 1:30 and 2:30 and I think that is when it came up.

Chair Furfaro: Apology accepted and I am glad to know that your t.v. is working.

Mr. Tschupp: On this matter, a couple of years ago we... background... we were installing at the Waimea Wastewater Treatment Plant approximately a hundred and twenty (120) KW PV system for that facility. That involves an interconnection agreement. I am not extremely well versed on the details of KIUC agreements for interconnections but my understanding is that it is an item that if it is more than a hundred KW then it falls into a different kind of schedule than for a smaller PV. They have what is known as a "NEM" Pilot Program. They have established a separate schedule for... separate agreement as part of the package of agreements that KIUC requires the County to execute or any applicant for a NEM Pilot and that is the size and classification that we would be going into KIUC for this project. Included in that NEW Pilot Program agreement is indemnification language which I do not have in front of me but I believe you do. The indemnification language is identical to the indemnification language that was in some of the other KIUC schedules that in 2010 when the Office of Economic Development was working on another KIUC PV agreement that they brought to the Council and at that time received an essentially generic approval that whenever this kind of agreement came up, that it would be acceptable for the Finance Director to execute the agreement with that indemnification language. However, the NEM Pilot agreement had not yet been drafted as of the date that the Council provided that prior approval for the County to execute such agreements. The language being identical, it being a new schedule when we were running – processing it through the County Attorney's Office, the Deputy County Attorney who was looking at it went, "well, yes, blanket agreement exist for this agreement and this agreement but this specific agreement for the NEM Pilot had not... was not in existence at the time that that blanket approval had been previously been given." It was her call that we should come to the Council and seek to obtain the approval for the Administration to execute KIUC agreements including the NEM Pilot agreement containing the indemnification.

Chair Furfaro: May I ask which Deputy County Attorney was assigned?

Mr. Tschupp: The Public Works... most of the Public Works workload goes through Jodie.

Chair Furfaro: Is there some urgency on this?

Mr. Tschupp: There is a limiting number in terms of capacity of NEM agreements that KIUC is able to execute at any given time. They did give us notification a few weeks ago that they were not sure whether they would still be able to execute that agreement. If the urgency is twofold... one (1) is, we want to hold our place in line with KIUC and the other is that the bigger project – the Waimea Plant Expansion Program is coming to a closure. We would like to basically...

Chair Furfaro: Since we are in this place, Councilmember Nakamura has to recuse herself.

Ms. Nakamura was noted recused from item C 2013-46.

Chair Furfaro: We have two (2) other members who are not available today and I would like to hear something from the County Attorney who is assigned to this. If we can take it back two (2) weeks, that is my question, would you be okay with that?

Mr. Tschupp: Sounds like there would be a quorum issue anyway, so it is what it is.

Chair Furfaro: Okay. But I appreciate you signaling us that you were prepared to come and talk but Councilmember Nakamura's husband is a consultant lawyer for KIUC.

Mr. Tschupp: Okay.

Chair Furfaro: And therefore she will recuse herself from this item. I am going to stay with the deferral and to the County Attorney, we would like to get some comments from Jody for the item in two (2) weeks. The Clerk just informed me that if we had to go with four (4), we could but I am not sure I would get four (4) votes at this point. So we will probably defer for two (2) weeks.

Mr. Tschupp: Okay.

Mr. Rapozo: The correspondence from Larry Dill was submitted on December 26 so... a couple weeks. Attached to it is the NEW Pilot Agreement – the Program and then another letter that is not dated or I guess this is a contract that is not dated and I am not sure when that was prepared. The confusion for me is that on the bottom of the NEW Pilot Program, there is an effective date of June 3, 2011.

Mr. Tschupp: That is correct.



Mr. Rapozo: And I do not feel comfortable adding indemnification language that could go backwards. In other words if there is a claim or if there was an issue prior to this Council approving it, I am not so sure that that is proper because I cannot see how we can back date indemnification.

Mr. Tschupp: I do not think that is what is being requested. The agreement was drafted by KIUC at around that time. This is the first time that... and it is a generic agreement for any and all customers.

Mr. Rapozo: There are two (2) dates on this, one (1) is issued June 3 and then effective June 3, 2011. There is a difference... there are two (2) basically saying... one (1) the date it was issued or generated and then effective. I am not sure and that... did this even get vetted through the County Attorney's Office at all?

Mr. Tschupp: I am not sure. That is a standard KIUC.

Mr. Rapozo: I understand that but they are asking for a County's signature.

Mr. Tschupp: But it would not be... this is a first time that this particular agreement has come to... this is the first application the County is making that that standard schedule would apply to.

Mr. Rapozo: So, would you not agree that more so it would go to the County Attorney first?

Mr. Tschupp: Well, it did.

Mr. Rapozo: If this is the first time.

Mr. Tschupp: It is the first time that that particular schedule has come up in a new application. The County Attorney's Office has looked at the prior schedules, I think it was a schedule Q and there is another KIUC standard schedule that contained exactly that same language in an indemnification agreement.

Mr. Rapozo: For another project.

Mr. Tschupp: That was for another project. There was another standard KIUC schedule I think it was when the new Fire Station came up and on that particular schedule...

Mr. Rapozo: I just want to make sure that anything that deals with indemnification, liability, exposure that it should be routed through the County Attorney's Office prior to coming here for approval.

Mr. Tschupp: And it was.

Mr. Rapozo: It was?

Mr. Tschupp: Yes. In fact the County Attorney's Office...

Mr. Rapozo: You are talking about one (1) for a prior project?

Mr. Tschupp: Well, both.

Mr. Rapozo: Okay so...

Mr. Tschupp: No, the prior project did not include the NEW Pilot but it included other schedules that had the identical indemnification language to what is in the NEW Pilot.

Mr. Rapozo: Okay but the original was not an NEW Pilot Program.

Mr. Tschupp: No.

Mr. Rapozo: This is a Pilot, this is the first time.

Mr. Tschupp: This is the first time the County is applying for a NEW Pilot Project.

Mr. Rapozo: Okay, got it. And you are asking us... or Public Works is asking us to approve indemnification language on the NEW Pilot which is the first time that we are getting involved with this and again, more so I would suggest that the County Attorney's Office review the indemnification language as well as the language that is attached to the NEW Pilot Program because it is the first time this County is going to participate in that. It would make sense. As much as I trust KIUC, we got to make sure that when we sign something – this Council says it is okay, that it was already vetted through the County Attorney's Office.

Chair Furfaro: Let me summarize this for you. It deals with indemnification. There is issues that currently exist before this Council between us and KIUC, that is number (1). Number two (2), I think if this is the first time this

NEM piece is presented as an expanded version of the contract, it would be nice for us to have a County Attorney here to explain it to us. So that we know exactly what process they reviewed when they gave you the green light. Then I am back to the fact that I do not think I will get four (4) votes with one (1) of our members recused based on some comments you just heard but I think being probably one (1) of the largest customers for KIUC, they can afford us two (2) weeks before they bump us out of line. Fair enough?

Mr. Tschupp: Fair enough.

Chair Furfaro: Again, I appreciate you coming here but I think we are going to move to defer this.

Mr. Tschupp: Understood.

Upon motion duly made by Mr. Bynum, seconded by Mr. Kagawa, and carried by a 4:2:1 vote, C 2013-46 was deferred (*Mr. Hooser and Ms. Yukimura was Excused.*) (*Ms. Nakamura was Recused.*).

Ms. Nakamura was noted back in the Council Meeting.

Resolution No. 2013-12, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BOARD OF WATER SUPPLY (*Ross A. Nakashima*): Mr. Rapozo moved to defer pending interview, seconded by Mr. Bynum and carried by a 5:0 vote (*Mr. Hooser and Ms. Yukimura was Excused.*).

Resolution No. 2013-13, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE FIRE COMMISSION (*Eugene Keith Jimenez*): Mr. Bynum moved to adopt Resolution No. 2013-13, seconded by Mr. Rapozo, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-14, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BUILDING BOARD OF APPEALS (*Glen Satoru Taba*): Mr. Bynum moved to adopt Resolution No. 2013-14, seconded by Mr. Rapozo, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-15, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BUILDING BOARD OF APPEALS (*Duane Ray Curammeng*): Mr. Rapozo moved to adopt Resolution No. 2013-15, seconded by Mr. Kagawa, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-16, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BOARD OF ETHICS (*Kathleen Ann Clark*): Mr. Bynum moved to adopt Resolution No. 2013-16, seconded by Mr. Rapozo, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-17, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE BOARD OF ETHICS (*Warren C. R. Perry*): Mr. Rapozo moved to adopt Resolution No. 2013-17, seconded by Mr. Kagawa, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-18, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE CHARTER REVIEW COMMISSION (*Jan W. TenBruggencate*): Mr. Bynum moved to adopt Resolution No. 2013-18, seconded by Mr. Kagawa, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-19, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE CHARTER REVIEW COMMISSION (*Mary Lou Barela*): Mr. Rapozo moved to adopt Resolution No. 2013-19, seconded by Mr. Bynum, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-20, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE CHARTER REVIEW COMMISSION (*Joel Dennis Guy*): Mr. Bynum moved to adopt Resolution No. 2013-20, seconded by Mr. Rapozo, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-21, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE CIVIL SERVICE COMMISSION (*Roy M. Morita*): Mr. Rapozo moved to adopt Resolution No. 2013-21, seconded by Mr. Bynum, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-22, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE COST CONTROL COMMISSION (*Laurie Lynn Koike Yoshida*): Mr. Rapozo moved to adopt Resolution No. 2013-22, seconded by Mr. Bynum, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-23, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE COST CONTROL COMMISSION (*Dirk Kapualani Joseph Apao*): Mr. Rapozo moved to adopt Resolution No. 2013-23, seconded by Ms. Nakamura, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-24, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE FIRE COMMISSION (*Clifton J. Miranda*): Mr. Rapozo moved to adopt Resolution No. 2013-24, seconded by Mr. Kagawa, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,

EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-25, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE LIQUOR CONTROL COMMISSION (*Josephine Ann Sokei*): Mr. Rapozo moved to adopt Resolution No. 2013-25, seconded by Mr. Kagawa, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-26, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE POLICE COMMISSION (*Bradley Chiba*): Mr. Rapozo moved to adopt Resolution No. 2013-26, seconded by Ms. Nakamura, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-27, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE POLICE COMMISSION (*Ernest L. Kanekoa, Jr.*): Mr. Rapozo moved to adopt Resolution No. 2013-27, seconded by Mr. Rapozo, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-28, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE POLICE COMMISSION (*James Raymond O'Connor*): Mr. Bynum moved to adopt Resolution No. 2013-28, seconded by Mr. Rapozo, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-29, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE SALARY COMMISSION (*Jo Ann Shimamoto*): Mr. Rapozo moved to adopt Resolution No. 2013-29, seconded by Ms. Nakamura, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-30, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE SALARY COMMISSION (*Michael Chavez Machado*): Mr. Bynum moved to adopt Resolution No. 2013-30, seconded by Mr. Rapozo, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2013-31, RESOLUTION CONFIRMING COUNCIL APPOINTMENT TO THE PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND COMMISSION (*Theodore Kawahinehelelani Blake*): Mr. Rapozo moved to adopt Resolution No. 2013-13, seconded by Ms. Nakamura.

Mr. Kagawa: I want to thank you for a great person that you selected. The shoe fits perfectly. Mr. Blake is going to do a great job. It is a new Committee and I think they needed quality people to start it off right.

The motion to adopt Resolution No. 2013-31 was then put, and carried by the following vote:

FOR APPROVAL:	Bynum, Kagawa, Nakamura, Rapozo	
	Furfaro	TOTAL – 5,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Before we go to the next item, I do want to say in general my thank-you to the Administration for putting forward some very good names. To my colleagues at the table, for the areas that were our responsibility and I think we are very, very lucky in our community that we have fine individuals that would step forward for volunteerism.

#### BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2462) AN ORDINANCE AMENDING ORDINANCE NO. B-2012-737 AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE AMOUNTS ESTIMATED IN THE BOND FUND (*Hardy Street Improvements \$740,000.00*): Mr. Kagawa moved for passage of Proposed Draft Bill No. 2462 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for February 13, 2013, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor

Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Mr. Bynum.

Chair Furfaro: I would like to ask in advance of this Committee Meeting that we get something from the Finance Department that reconciles these amounts for your Committee in discussion. I would suggest, Mr. Bynum, that we ask them in advance at your Committee Meeting to reconcile that number.

Mr. Rapozo: I have a process question, I understand that it is going to Finance but I am assuming that we are going to have discussion with Public Works. We are taking seven hundred forty thousand dollars (\$740,000.00) from the Pi'ikoi renovation to Hardy Street Improvements which is quite a departure from what it was intended. The other question I have is being that it is bond fund CIP, what restrictions do we have for moving around moneys in the bond? I am assuming that when these bond fund were approved, it went with a specific list of projects.

Chair Furfaro: It did. I am a part of the team that goes up to speak to the Bond Counsel, they seem to be somewhat flexible here. I want to make sure on the reconciliation of this I believe my communication for the Finance Committee, will also copy Larry Dill with an expectation that he is here.

Mr. Rapozo: Just for myself, I would need to see a presentation by Mr. Larry.

Chair Furfaro: I can expand to say that is we are looking for.

Mr. Rapozo: And maybe from Finance and I understand, I trust you judgment on the Bond people that they are somewhat flexible but I am concern that... and this is not the first money bill that we have moved projects from the Bond or within the Bond Fund and I am getting a little concerned because we are talking substantial amount of money. I want to make sure that whatever we do here in Finance with this Bond Fund that we are in total compliance with the Bond Company and I just do not want to see us get penalize later down the road because we used the funds differently. That is my only concern.

Chair Furfaro: Just to answer your question, when I was in Seattle this week, I did get a courtesy call from Larry. He talked to me about the reason they are expanding that money, they have an opportunity for some more Federal money. Those Federal money will actually do more street work in this phase than originally anticipated, so your comments are well taken and it will be in the questionnaire. I certainly feel that Mr. Bynum will find this in his Committee with those concerns addressed as well.

Mr. Bynum: We are certainly in this process of doing this Bill, ask those questions, and get them answered. I just want to say that this is a project that I have been waiting six (6) year for and I am really excited about Hardy Street, it is the one (1) right behind us here. This is an eight million dollars redoing of Hardy Street and they got enough funds to go all the way from Kūhiō Highway to Rice Street and do the whole section. It will have a strong impact with the traffic downtown here and it is consistent with other plans we have for the redevelopment of the Civic Center and street closures. In the transmittal letter, they explained



that they are moving the money from Pi'ikoi interior renovation because our asbestos removal cost were much less than what we have expected and they still have sufficient funds in the Pi'ikoi interior renovation phase. This is actually really good news that we are getting off the dime with Hardy Street improvements that have been... we have these Federal funds for almost five (5) years, but we will make sure that all of these questions get answered in the process.

Chair Furfaro: Those three (3) questions will be in my correspondence and I will be meeting with the County Clerk and Deputy after this meeting.

Ms. Nakamura: I have also in preparation for today's meeting have asked County Engineers for a lot of information which they have provided to me and I will ask Staff to make copies for the rest of you. It describes what the Hardy Street improvement consist of and they included plans for that, the cost of the asbestos treatment, the hazardous waste removal at Pi'ikoi, but just the details because really this one (1) page document does not really describe the extent of both projects. When you are taking away seven hundred and forty thousand dollars... to me, what might be a project that has the potential for revenue generation for the County in some respects, potentially, I would like to know how we are going to replace those funds in the upcoming budget? I feel like there should have been more to this proposal rather than a one (1) page document. I will ask Staff to make copies for the rest of you of how they responded to my questions.

Chair Furfaro: Thank you very much on that. I want to say the question raised about moving Bond money has been a question that we had in the past and it was a good one (1) to be asked by Mr. Rapozo. I think we are all excited about expanding the street work but again we constantly shifting priorities as we approach things that come up on our radar screen. My disappointment is in the fact that it has been a year that Big Save has been gone and that was a profit center, not a cost center that brought in rent for us. Those are the things in these difficult times coming forward, they have to move with some more urgency and I have not seen a plan on what was a profit center turning it into a cost center now and that is the Big Save space. Maybe we could have kept a tenant in there for a couple more years but that is water under the bridge and my correspondence will reconcile that.

Mr. Rapozo: I think you and I are pretty much on the same wave length as a result of the briefings we have had going forward. These are the enough decisions we are going to have to make as we look at seven hundred forty thousand dollars, as we look at projects. The fact that we secure Federal Highway Funds may not justify spending seven hundred forty thousand dollars of County money just because we get the Federal money. I think that is the thinking we got to start really looking at because we are going to have to reduce somewhere and I know it is the first reading Bill and we do not normally have discussion but Mr. Chair, you are right on target. We had opportunities and the fact that we are out on a... it is like we are on a money hunt with the Federal Government and as long as we can get it then we will go find the money in the County to go and spend. Seven hundred and forty thousand is quite a bit of money, if you look at our budget, so I think this is the time that we as a Council is going to have to prioritize certain projects and really how do we move forward in an economy that is heading South? How are we going to prioritize projects and do we need to do Hardy Street today? Can it wait and I think that is going to be a tough decision. I know some of the Councilmembers feel that is a priority and for me, not so because I think we have a

lot of other priorities that need addressing as well. That is the discussions I am anticipating, a lively discussion here for this item and I appreciate you getting those questions over.

Chair Furfaro: Those three (3) questions will be going across. At the same time, I want to be sensitive to what Mr. Bynum is saying because as it looks right now making eight million dollars available to us from the Federal Government might be a window of opportunity we cannot pass up. We will have more dialogue as we go to the next reading.

The motion for passage of Proposed Draft Bill No. 2462 was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Kagawa, Nakamura, Rapozo, Furfaro	TOTAL - 5,
AGAINST PASSAGE:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	Hooser, Yukimura	TOTAL - 2,
RECUSED & NOT VOTING:	None	TOTAL - 0.

ADJOURNMENT.

There being no further business, the meeting was adjourned at 5:42 p.m.

Respectfully submitted,

JADE K. FOUNTAIN-TANIGAWA  
Deputy County Clerk

:cy/ds

January 17, 2013  
FLOOR AMENDMENT

Resolution No. 2013-11, Relating to Supporting Reauthorization of the Violence Against Women Act (VAWA)

Introduced by: JOANN A. YUKIMURA

Amend Resolution No. 2013-11 by amending the 9th paragraph to read as follows:

“WHEREAS, no one in Congress should be [concerned with what are thought to be correct rules and details about rape and domestic violence, thereby discriminating against “legitimate” victims receiving support and services; and] setting up laws that provide one standard of law enforcement for one group of victims, and a different standard for another group; and”

(Material to be deleted is bracketed. New material to be added is underscored.)  
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